

Halsbury's Laws of England/EXPLOSIVES (VOLUME 17(2) (REISSUE))/1. THE LEGISLATION AND THE ADMINISTRATION/(1) THE STATUTES/(i) In general/901. The law relating to explosives.

EXPLOSIVES (

1. THE LEGISLATION AND THE ADMINISTRATION

(1) THE STATUTES

(i) In general

901. The law relating to explosives.

The manufacture, keeping, sale and conveyance of explosives properly so called may give rise to special problems in regard to criminal¹, contractual² or tortious³ liability, but the subject matter of this title is, in general, the statutory control imposed by or under the Explosives Act 1875⁴, the Fireworks Act 1951, the Emergency Laws (Miscellaneous Provisions) Act 1953, and the Health and Safety at Work etc Act 1974.

'Explosive' and 'explosion' have a popular sense wider than that attributed to those terms by statute⁵. Damage may be caused by the explosion of substances which are not classified as explosives in the sense hereinafter used⁶. The risk of explosion of such things must always be considered in assessing the standard of care required by law to be shown apart from the statute⁷. It is not so much that a substance having explosive properties is to be regarded as dangerous in itself; it is, rather, a question whether by reason of extraneous circumstances it may be more readily made dangerous⁸. The manufacturer⁹ and the carrier¹⁰ of a chattel which causes an explosion owing to ignorance of its characteristics may thus be liable in the absence of proper warning.

Explosion is an insurable risk, whether occurring in connection with explosives in the sense used in the Explosives Act 1875 or as a destructive accident unconnected with them. Thus it was within an insurance policy against the cessation of business caused by an accident, notwithstanding that the resultant fire was an excepted risk¹¹. An accident policy which excepted fire covered the total loss in the disaster where the fire was merely an incident in the explosion¹². On the other hand a fire insurance with an exception of loss by explosion has been held not to cover loss caused by explosion following fire¹³. Such propositions, however, relate to the construction of a particular policy and their effect must be viewed as limited accordingly¹⁴. Non-disclosure of a conviction under the Explosives Act 1875 may avoid a policy covering accidental explosions in an explosives factory¹⁵.

The use of explosives in particular circumstances¹⁶ may be subject to control under legislation other than the Explosives Act 1875, as also may explosions produced by new scientific discoveries¹⁷. The risk of explosion arising in certain processes or operations and with the storage of some commodities necessitates special safety precautions¹⁸. In such cases there may be two codes to consider; in other instances the substance can only fall under one code or the other¹⁹. The possession or use of explosives may also give rise to prosecutions under other statutes²⁰.

¹ The storing of explosives in a dangerous manner may be an indictable nuisance: *R v Chilworth Gunpowder Co Ltd* (1888) 4 TLR 557. As regards the saving of the common law offences see PARA 1039 post. The jury may

have regard to the chance of ignition from extraneous causes, notwithstanding that every precaution is taken to minimise the danger of explosion. The mere keeping of large quantities of gunpowder in a densely populated area is indictable as a nuisance at common law: see *R v Lister and Biggs* (1875) Dears & B 209. As to the granting of an injunction pending indictment, no damage having yet occurred, see *Crowder v Tinkler* (1816) 19 Ves 617. Moreover, criminal liability for causing an explosion, or making explosives or possessing them for unlawful purposes, may arise under statutes other than the Explosives Act 1875: see the Explosive Substances Act 1883; and PARA 1021 et seq post; and note 20 infra.

2 *Wilson v Rickett, Cockerell & Co Ltd* [1954] 1 QB 598, [1954] 1 All ER 868, CA (consignment of 'Coalite' containing explosive accidentally mixed with it during transit held not to be of merchantable quality). The consignor of an article which is of such a dangerous nature as to require extraordinary care in its conveyance owes a duty to warn the carrier of its nature: *Farrant v Barnes* (1862) 11 CBNS 553 (carboy of acid exploded).

3 There is a strict liability for damage to neighbouring property on the principle of *Rylands v Fletcher* (1868) LR 3 HL 330: see *Rainham Chemical Works Ltd v Belvedere Fish Guano Co Ltd* [1921] 2 AC 465, HL. In *Miles v Forest Rock Granite Co (Leicestershire) Ltd* (1918) 34 TLR 500, the Court of Appeal considered that the same principle would enable a pedestrian injured on the highway by blasting to recover damages, although the case had been decided on the issue of negligence. In *Read v J Lyons & Co Ltd* [1947] AC 156, [1946] 2 All ER 471, HL, an employee injured at work by an explosion in a munitions factory failed to recover in the absence of proof of negligence. It seems that negligence must be proved in cases of personal injury. On the other hand, in *Perry v Kendricks Transport Ltd* [1956] 1 All ER 154, [1956] 1 WLR 85, CA, Parker LJ thought that *Rylands v Fletcher* liability would extend to personal injuries. See generally TORT vol 97 (2010) PARA 401 et seq.

4 References in the Explosives Act 1875 itself to 'this Act' include licences, certificates and subordinate legislation granted or made under it: see PARA 903 post. The Explosives Act 1875 has been amended, principally by the Explosives Act 1923; and the Explosives Acts 1875 and 1923 etc (Repeals and Modifications) Regulations 1974, SI 1974/1885.

5 For the meaning of 'explosive' in the Explosives Act 1875 see PARA 905 post. Note, however, that particular primary or subordinate legislation may define 'explosive' independently for its own purposes: see eg paras 912 note 4, 1000 note 2 post.

6 See eg *Burrows v March Gas and Coke Co* (1872) LR 7 Exch 96. As to the explosion of gas naturally present in mines see HEALTH AND SAFETY AT WORK vol 53 (2009) PARA 799. As to atomic energy and radioactive substances see FUEL AND ENERGY vol 19(3) (2007 Reissue) PARA 1337 et seq.

7 See eg *Merrington v Ironbridge Metal Works Ltd* [1952] 2 All ER 1101 (explosion of aluminium dust in course of fire fighting); and generally NEGLIGENCE.

8 *Beckett v Newalls Insulation Co Ltd* [1953] 1 All ER 250 at 255, [1953] 1 WLR 8 at 16, CA, per Singleton LJ (the law expects of a man a great deal more care in carrying a pound of dynamite than a pound of butter).

9 *Anglo-Celtic Shipping Co Ltd v Elliott and Jeffery* (1926) 42 TLR 297 (cleaning fluid used on cast iron gave off explosive mixture).

10 *MacDonald v David MacBrayne Ltd* 1915 SC 716 (explosion of naphtha delivered in error with paraffin).

11 *Abasand Oils Ltd v Boiler Inspection and Insurance Co of Canada* (1949) 65 TLR 713, PC.

12 *Boiler Inspection and Insurance Co of Canada v Sherwin-Williams Co of Canada Ltd* [1951] AC 319, PC.

13 *Stanley v Western Insurance Co* (1868) LR 3 Exch 71; *Re Hooley Hill Rubber and Chemical Co Ltd and Royal Insurance Co Ltd* [1920] 1 KB 257, CA.

14 As regards the interpretation and effect of insurance policies see INSURANCE vol 25 (2003 Reissue) PARAS 83-92.

15 As to the duty of disclosure in insurance policies see *Lindenau v Desborough* (1828) 8 B & C 586 at 592; and INSURANCE vol 25 (2003 Reissue) PARA 37.

16 Blasting in mines is controlled by the Health and Safety Executive by regulations made under the Mines and Quarries Act 1954 s 69 (as amended): see HEALTH AND SAFETY AT WORK vol 52 (2009) PARA 401, HEALTH AND SAFETY AT WORK vol 53 (2009) PARAS 811-812, 817. Under s 190 (repealed, with a saving for regulations already in force), orders relating to explosives made under the Coal Mines Act 1911 s 61 (repealed), may be re-enacted. As to the control of the possession and sale of firearms see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(2) (2006 Reissue) PARA 630 et seq. As to the Secretary of State see PARA 913 post.

17 As to the Secretary of State's duties in relation to atomic energy see FUEL AND ENERGY vol 19(3) (2007 Reissue) PARA 1358 et seq. For other legislation relating to explosives see the Classification and Labelling of Explosives Regulations 1983, SI 1983/1140 (as amended) (see PARA 904 post); the Packaging of Explosives for Carriage Regulations 1991, SI 1991/2097 (as amended) (see PARA 989 post); and the Control of Explosives Regulations 1991, SI 1991/1531 (as amended) (see PARA 967 post).

18 See the Factories Act 1961 s 31 applying to explosive dust, gas or vapour and to containers of explosive substances.

19 The definition of 'celluloid' in the Celluloid and Cinematograph Film Act 1922 s 9 excludes substances which are explosives within the meaning of the Explosives Act 1875. Collodion-cotton in solution or mixed with a liquid in certain conditions may not be subject to that Act (see PARA 905 note 2 post), but it may then come within the Petroleum (Mixtures) Order 1929, SR & O 1929/993. The Highly Flammable Liquids and Liquefied Petroleum Gases Regulations 1972, SI 1972/917 (as amended), do not apply to premises as to which a licence or certificate under the Explosives Act 1875 is in force or would, but for the fact that the premises or parts of the premises are under the control, or held for the service, of the Crown, be required to be in force: Highly Flammable Liquids and Liquefied Petroleum Gases Regulations 1972, SI 1972/917, reg 3(4).

20 See eg the Offences against the Person Act 1861 ss 28-30 (all as amended) (see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(1) (2006 Reissue) PARAS 125-126, 130), s 64 (as amended) (see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(2) (2006 Reissue) PARA 711); the Explosive Substances Act 1883 (see PARAS 1022-1025 post); and the Criminal Damage Act 1971 s 3 (see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(1) (2006 Reissue) PARA 338).

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901-923 The Legislation and the Administration

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

901 The law relating to explosives

NOTE 19--In definition of 'celluloid' reference to Explosives Act 1875 is now to Manufacture and Storage of Explosives Regulations 2005, SI 2005/1082 (see PARAS 924A-924E); 1922 Act s 9 (amended by SI 2005/1082).

Halsbury's Laws of England/EXPLOSIVES (VOLUME 17(2) (REISSUE))/1. THE LEGISLATION AND THE ADMINISTRATION/(1) THE STATUTES/(i) In general/902. Scope of the Explosives Act 1875 and modern legislation.

902. Scope of the Explosives Act 1875 and modern legislation.

The Explosives Act 1875 deals with the classification, manufacture, importation, keeping, sale and conveyance of explosives, that is to say, of those substances having explosive properties which either are named in the Act or have been brought within its provisions under the powers set out in the following paragraphs.

Express exemption is conferred by the Act on places and explosives under government control¹, so that in practice the question whether or not the Act binds the Crown, which is otherwise mentioned only in relation to the power to make Orders in Council, does not arise².

The manufacture, keeping, use and conveyance of explosives is also governed to a considerable extent by the Health and Safety at Work etc Act 1974 and regulations made thereunder, which make further provision for securing the health, safety and welfare of persons at work, and for controlling the keeping and use of explosives or highly flammable or otherwise dangerous substances³. The Health and Safety Executive, a body corporate established by that Act⁴, now exercises many of the functions under the Explosives Act 1875 formerly exercised by the Secretary of State⁵

¹ See PARA 909 post.

² As to this question generally see STATUTES. Fireworks consigned from a factory under contract to supply them to the Crown are exempt from marking: see the Fireworks Act 1951 s 5(3); and PARA 1015 post. As to the classification of military explosives see PARA 904 note 5 post.

³ See the Health and Safety at Work etc Act 1974 Pt I (ss 1-54) (as amended); and see also generally HEALTH AND SAFETY AT WORK. For classification and labelling under regulations made under the Health and Safety at Work etc Act 1974 see the Classification and Labelling of Explosives Regulations 1983, SI 1983/1140 (as amended); and PARA 904 post; and for control under regulations made under the Health and Safety at Work etc Act 1974 see the Packaging of Explosives for Carriage Regulations 1991, SI 1991/2097 (as amended) (see PARA 989 post).

⁴ See the Health and Safety at Work etc Act 1974 s 10 (as amended); and HEALTH AND SAFETY AT WORK vol 52 (2009) PARA 361. As to the Health and Safety Executive see HEALTH AND SAFETY AT WORK vol 52 (2009) PARAS 361-371.

⁵ These include, in particular, the granting of licences (see eg paras 933-937 post), the receiving of notification of accidents (see PARAS 1041, 1042 post), and the appointing of inspectors (see PARA 914 post). As to the Health and Safety Executive's power to grant exemptions from the Explosives Act 1875 see the Explosives Act 1875 (Exemptions) Regulations 1979, SI 1979/1378. As to the Secretary of State see 913 post.

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901-923 The Legislation and the Administration

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

902 Scope of the Explosives Act 1875 and modern legislation

TEXT AND NOTES--The provisions of the Explosives Act 1875 and subordinate legislation relating to the manufacture and storage of explosives are largely replaced by the Manufacture and Storage of Explosives Regulations 2005, SI 2005/1082: see PARAS 924A-924E.

Halsbury's Laws of England/EXPLOSIVES (VOLUME 17(2) (REISSUE))/1. THE LEGISLATION AND THE ADMINISTRATION/(1) THE STATUTES/(i) In general/903. Subordinate legislation.

903. Subordinate legislation.

In the Explosives Act 1875, 'this Act' includes any licence, certificate, byelaw, regulation, rule and order granted or made under it¹. Her Majesty may, from time to time, make Orders in Council for doing anything which is expressed in the Explosives Act 1875 to be authorised, directed, regulated, prescribed or done by Order in Council and every Order in Council so made must be laid before both Houses of Parliament². Her Majesty may by Order in Council, and the Secretary of State³ may by order, from time to time revoke, add to or alter any previous Order in Council or order of the Secretary of State, as the case may be⁴. The Act itself, the subordinate legislation and other documents issued under it must be regarded as a whole in their application to a particular case. In this title 'statutory order' is used to include all such subordinate legislation and the relevant licences and certificates.

Additionally, regulations under the Health and Safety at Work etc Act 1974 govern the conveyance of dangerous goods (including explosives) by rail⁵ or road⁶, the packing and marking of explosives⁷, and the classification and labelling of substances⁸. Such regulations are health and safety regulations, and as such are enforced either according to their own terms or under the Health and Safety at Work etc Act 1974⁹.

1 Explosives Act 1875 s 108.

2 Ibid s 83 (this part of s 83 amended by the Statute Law (Repeals) Act 1986).

3 As to the Secretary of State see PARA 913 post.

4 Explosives Act 1875 s 83. The provisions of the Health and Safety at Work etc Act 1974 s 50 (as amended) apply to any power of the Secretary of State to recommend the making of an Order in Council, to make orders or rules or to make or require the making of byelaws as they apply to a power to make regulations: Explosives Act 1875 s 83 (added by the Explosives Acts 1875 and 1923 etc (Repeals and Modifications) Regulations 1974, SI 1974/1885, regs 2, 9, Sch 2 para 22.

5 See PARAS 994-998 post

6 See PARAS 999-1012 post.

7 See PARA 989 post.

8 See PARA 904 post.

9 As to enforcement and penalties for contravention of health and safety regulations generally see the Health and Safety at Work etc Act 1974; and HEALTH AND SAFETY AT WORK vol 53 (2009) PARA 852 et seq.

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901-923 The Legislation and the Administration

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

903 Subordinate legislation

TEXT AND NOTE 1--Words 'certificate ... rule' omitted: 1875 Act s 108 (amended by SI 2005/1082).

TEXT AND NOTES 3, 4--The Secretary of State is no longer empowered to revoke, add to or alter any previous Order in Council or order of the Secretary of State: 1875 Act s 83 (amended by SI 2005/1082).

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904. Classification and labelling under health and safety regulations.

An explosive article¹, substance², combination³ or unit load⁴ may not, subject to exceptions⁵, be conveyed, kept or supplied unless (1) it has been classified⁶ for the time being according to composition and in the form or packaging, if any, in which it is to be conveyed, kept or supplied; and (2) it and any packaging comply with the labelling requirements, if any, imposed⁷ in respect of them⁸. Assignment on classification to Class 1⁹ and labelling in compliance with the regulations¹⁰ are deemed to satisfy the Explosives Act 1875 and any instrument made under it¹¹. Otherwise, the above provisions¹² are not to be construed as affecting any other requirement of law relating to the conveyance, keeping or supply of any article, substance, combination or unit load to which the regulations¹³ apply¹⁴. Contravention of the regulations is an offence¹⁵, and the enforcing authority for their purposes is in all cases the Health and Safety Executive¹⁶.

1 'Explosive article' means an article containing one or more explosive substances: Classification and Labelling of Explosives Regulations 1983, SI 1983/1140, reg 2.

2 'Explosive substance' means a solid or liquid substance or a mixture of solid or liquid substances or both, which is capable by chemical reaction in itself of producing gas at such a temperature and pressure and at such a speed that it could cause damage to surroundings or which is designed to produce an effect by heat, light, sound, gas or smoke or a combination of these as a result of non-detonative, self-sustaining, exothermic chemical reactions: *ibid* reg 2.

3 *le* a combination in the same packaging of articles or substances or of one or more of each of them: *ibid* reg 2.

4 *le* the unit formed when packaged or unpackaged articles are assembled on or in a device which enables them to be mechanically handled as one unit, but which is not any type of freight container, aircraft container, container with integral pallet, aircraft pallet or vehicle: *ibid* reg 2.

5 The Classification and Labelling of Explosives Regulations 1983, SI 1983/1140 (as amended), do not apply to an article, substance, combination or unit load which complies with the classification and labelling requirements imposed in respect of it by or under the Explosives Act 1875, but this exception does not apply after 1 November 1988, other than to the keeping of articles and substances manufactured, and combinations and unit loads formed, before 1 November 1983: Classification and Labelling of Explosives Regulations 1983, SI 1983/1140, reg 4(1)(a). Further, the regulations do not apply to any article, substance, combination or unit load which has not been classified or which has been allocated on classification the United Nations Serial Number 0190 and which (1) does not include any initiating explosives; (2) is a commercial sample or a sample for one or more of the following purposes, namely research and development, quality control, their testing or in connection with an application for their classification; and (3) is in accordance with such conditions as are approved in writing for the time being by the Health and Safety Executive or, in the case of military explosives, by the Secretary of State: reg 4(1)(b) (substituted by SI 1999/303). For the purposes of the Classification and Labelling of Explosives Regulations 1983, SI 1983/1140, reg 4(1)(b) (as so amended), 'initiating explosives' means explosives intended solely to cause the detonation of other explosives: reg 4(1)(b) (as so amended). Further exceptions apply in the case of manufacturing or of unpacking for immediate use, of retail of fireworks and small arms ammunition, and of explosive nuclear devices and their components: see reg 4(2)-(4).

'Military explosive' means any article, substance, combination or unit load to which the regulations apply (1) under the control of the Secretary of State, or otherwise held for the service of the Crown, for the purposes of the Ministry of Defence; (2) under the control of a headquarters or organisation designated for the purposes of the International Headquarters and Defence Organisations Act 1964 or of the service authorities of a visiting force within the meaning of any of the provisions of the Visiting Forces Act 1952 Pt I (ss 1-12) (as amended), or otherwise held for the service of such a headquarters, organisation or visiting force; or (3) the conveyance of which is certified by the Secretary of State to be in connection with the execution of a contract with the Secretary of State or with a headquarters or organisation designated for the purposes of the International Headquarters and Defence Organisations Act 1964 or with the service authorities of a visiting force within the

meaning of any of the provisions of the Visiting Forces Act 1952 Pt I: Classification and Labelling of Explosives Regulations 1983, SI 1983/1140, reg 2.

6 Ie by the Health and Safety Executive or, in the case of a military explosive, by the Secretary of State: see *ibid* reg 2. As to the Health and Safety Executive see HEALTH AND SAFETY AT WORK vol 52 (2009) PARAS 361-371. As to the Secretary of State see PARA 913 post. For fees for testing see the Health and Safety (Fees) Regulations 1999, SI 1999/645.

7 Ie imposed by the Classification and Labelling of Explosives Regulations 1983, SI 1983/1140 (as amended): see reg 3(2)(b). For the labelling requirements so imposed see regs 6-10, Schs 3-5 (Sch 4 amended by SI 1996/2093; regs 6, 9, Sch 3 amended by SI 1996/2093; SI 1999/303).

8 Classification and Labelling of Explosives Regulations 1983, SI 1983/1140, reg 3(2). Subject to the exceptions (see note 5 *supra*) this applies to (1) explosive articles or substances, whether in packaging or not; (2) combinations in the same packaging of explosive articles or substances or of one or more of each; (3) unit loads of any of the following: (a) explosive articles, whether in packaging or not; (b) packaged explosive substances; (c) combinations in the same packaging of explosive articles or substances or of one or more of each: reg 3(1). However, in relation to supply only, the Classification and Labelling of Explosives Regulations 1983, SI 1983/1140 (as amended) apply to the items specified above only in so far as they are supplied with a view to producing a practical effect by explosion or a pyrotechnic effect: reg 3(1).

9 Ie Class 1 in respect of explosives or the classification of dangerous goods as set out in the Second Revised Edition of the Recommendations prepared by the United Nations Committee of Experts on the Transport of Dangerous Goods published in Chicago in 1982: Classification and Labelling of Explosives Regulations 1983, SI 1983/1140, reg 2 (substituted by SI 1999/303).

10 Ie the Classification and Labelling of Explosives Regulations 1983, SI 1983/1140 (as amended).

11 *Ibid* reg 11. The Explosives Act 1875 and any such instrument are modified accordingly: Classification and Labelling of Explosives Regulations 1983, SI 1983/1140, reg 11.

12 Ie *ibid* reg 3(2).

13 Ie the Classification and Labelling of Explosives Regulations 1983, SI 1983/1140 (as amended).

14 *Ibid* reg 3(3). For application of the regulations see note 8 *supra*.

15 As to enforcement see PARA 903 note 9 *ante*. It is a defence for any person to prove that he took all reasonable precautions and exercised all due diligence to avoid the commission of such an offence or of a breach of duty imposed by the Classification and Labelling of Explosives Regulations 1983, SI 1983/1140 (as amended): reg 12.

16 *Ibid* reg 13. Both the Health and Safety Executive and, in the case of military explosives, the Secretary of State, have power to grant exemptions: see reg 14 (amended by SI 1999/303).

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901-923 The Legislation and the Administration

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

904 Classification and labelling under health and safety regulations

TEXT AND NOTES 1-8--Now, an article, substance, combination or unit load to which SI 1983/1140 applies may not be (1) imported into the United Kingdom in the course of or for private use or use at work or conveyed unless it has been classified and that classification has been approved in writing by the Executive, or, in the case of a military explosive, by the Secretary of State; and (2) conveyed, kept or supplied unless it and any packaging comply with any labelling requirements imposed in respect of them by SI 1983/1140: reg 3(2) (substituted by SI 2004/568).

NOTE 6--Definition of 'classified' amended: SI 1983/1140 reg 2(1) (amended by SI 2007/1573). SI 1999/645 now Health and Safety (Fees) Regulations 2009, SI 2009/515 (amended by SI 2008/2852).

TEXT AND NOTES 9-11--Revoked: SI 2005/1082.

NOTE 14--SI 1983/1140 reg 3(3) amended: SI 2005/1082.

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905. Meaning of 'explosive'.

In the Explosives Act 1875 'explosive' means gunpowder, nitro-glycerine¹, dynamite, guncotton², blasting powders, fulminate of mercury or of other metals, coloured fires, and every other substance, whether similar to those named or not, used or manufactured with a view to producing a practical effect by explosion or a pyrotechnic effect³, and it includes fog signals, fireworks, fuses, rockets, percussion caps, detonators, cartridges, ammunition of all descriptions, and every adaptation or preparation of an explosive as above defined⁴.

Part I of the Act⁵, which deals with manufacture in factories, storing in magazines, stores and registered premises and with sale and conveyance, applies in terms only to gunpowder but, subject to modifications, is extended by subsequent provisions of the Act to explosives generally⁶.

In regulations made under the Health and Safety at Work etc Act 1974, 'explosive' is separately defined, generally by reference to the terms 'explosive substance' and 'explosive article'⁷.

1 To the present time it has not been found necessary to enforce the provisions of the Explosives Act 1875 in regard to small quantities of dilute preparations of nitro-glycerine manufactured and kept for medicinal purposes.

2 'Guncotton' is held to include the lower forms of nitro-cotton, usually known as 'collodion-cotton', between which and ordinary guncotton no distinct line can be drawn. As a matter of administrative practice certain preparations of collodion-cotton are not regarded as coming within the meaning of the Explosives Act 1875. These materials consist of nitrocellulose of which not less than 85% is soluble in a mixture of ether and alcohol, and which contains not more than 12.3% of nitrogen. Further, to escape the normal requirements for guncotton, this material must be either (1) in solution; or (2) uniformly mixed with not less than one-third of its weight of calcium chloride solution, water, benzene, butyl or isopropyl alcohol, methylated spirit (with or without xylol in equal parts), naphtha, toluol or xylol (free from piperidine) and, except in the case of mixtures with calcium chloride or water, in an airtight container weak enough to open at a pressure of 200 lb per square inch or fitted with a bursting disc or other device which will act at that pressure; or (3) gelatinised, the product having 82 parts of low nitrogen soluble nitro-cellulose and not less than 18 parts of dibutyl phthalate, tricresyl phosphate or mixtures thereof, with or without castor oil. Additionally, the Explosives Inspectorate will normally require that a sample demonstrates by means of a rate-of-burning test (particularly in the case of those materials for which a container with a maximum bursting pressure is specified) that any accidental combustion is unlikely to produce explosive effects.

3 'Pyrotechnic effect' has not been defined, although it is usually considered to include any practical effect brought about by the chemical generation of heat, light, sound or smoke. Such a broad definition would include many objects which it is clearly not the intention of the Explosives Act 1875 to control, such as matches or magnesium wire. Except where tested in the courts, the distinction, as with guncotton, is a matter of administrative convenience.

4 Ibid s 3. The definition of 'explosive' in s 3 may also be applied to the Explosive Substances Act 1883: *R v Wheatley* [1979] 1 All ER 954, [1979] 1 WLR 144, CA.

5 In the Explosives Act ss 4-38 (as amended).

6 See ibid ss 39, 40 (s 40 as amended) (see PARAS 933, 976 post).

7 See eg paras 989 note 1, 1000 note 2 post.

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901-923 The Legislation and the Administration

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

905 Meaning of 'explosive'

TEXT AND NOTES 5, 6--Replaced. As to the meaning of 'explosive' under the Manufacture and Storage of Explosives Regulations 2005, SI 2005/1082, see PARA 924A NOTE 2.

Halsbury's Laws of England/EXPLOSIVES (VOLUME 17(2) (REISSUE))/1. THE LEGISLATION AND THE ADMINISTRATION/(1) THE STATUTES/(i) In general/906. Extension to other substances.

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Any substance which appears specially dangerous to life or property by reason either of its explosive properties or of any process in its manufacture being liable to explosion, may be declared by Order in Council to be an explosive within the meaning of the Explosives Act 1875; and the provisions of the Act and of any statutory order under it will thereupon, subject to any exceptions, limitations and restrictions specified in the Order in Council, extend to that substance as if it were included in the term 'explosive' in the Act¹. Under this power certain substances have been declared explosives subject in each case to certain exceptions and conditions².

¹ Explosives Act 1875 s 104. For the meaning of 'explosive' in the Act see PARA 905 ante. As to the scope of the term 'statutory order' see PARA 903 ante.

² These are (1) picric acid when being manufactured (except when mixed with at least half its weight of moisture); picric acid when kept, conveyed, imported or sold (except when so mixed or not exceeding 1 lb weight if four conditions are observed); picrates (except when so mixed); and mixtures of picric acid with other substances (except when mixed in a certain manner and kept or conveyed in accordance with conditions) (Order in Council (No 26), SR & O 1926/823 (amended by SI 1984/510)); (2) dinitrophenol (except when conditions as to mixing, isolation from specified metals and metallic oxides, and packages are satisfied); dinitrophenolate (except when mixed with at least half its weight of water and kept or conveyed in watertight packages); and mixtures of dinitrophenol with other substances (except when mixed in a certain manner and subject to conditions, in particular as to marking) (Explosives (Di-nitro-phenol and Di-nitro-phenolate) Order 1927 (No 27), SR & O 1927/594 (amended by SI 1984/510)); (3) acetylene when liquid or at pressure exceeding 9 lb per square inch above that of the atmosphere or when mixed with air or oxygen gas (subject to a power of the Secretary of State by order to exempt acetylene in specified mixtures or forms not having explosive properties) (Order in Council (No 30), SR & O 1937/54 (amended by SR & O 1947/805)). The manufacture, keeping, import, conveyance and sale of acetylene is prohibited by that Order in Council, but it does not apply to manufacture and keeping on premises, and subject to conditions and tests approved by the Home Secretary, where it is under pressure not exceeding 22 lb per square inch above that of the atmosphere; nor to acetylene mixed with air or oxygen in burners; nor to mixtures with air necessarily and properly occurring in apparatus to produce pure acetylene: Order in Council (No 30) (amended by SR & O 1947/805). For fees in relation to approvals of premises and apparatus in which acetylene is manufactured or kept see the Health and Safety (Fees) Regulations 1999, SI 1999/645. As to exemptions of compressed acetylene by order of the Secretary of State see PARA 909 notes 26, 27 post. As to the Secretary of State see PARA 913 post. As to the Health and Safety Executive see HEALTH AND SAFETY AT WORK vol 52 (2009) PARAS 361-371.

UPDATE

901-923 The Legislation and the Administration

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

906 Extension to other substances

NOTE 2--SR & O 1927/594 revoked: SI 2005/1082. SI 1999/645 now Health and Safety (Fees) Regulations 2009, SI 2009/515 (see PARA 904).

Halsbury's Laws of England/EXPLOSIVES (VOLUME 17(2) (REISSUE))/1. THE LEGISLATION AND THE ADMINISTRATION/(1) THE STATUTES/(i) In general/907. Authorised explosive.

907. Authorised explosive.

'Authorised explosive' is not defined in the Explosives Act 1875 but it is used and defined in Orders in Council under the Act as meaning any explosive for the time being authorised to be manufactured for general sale or to be imported for general sale, whether with or without a licence¹.

¹ Order in Council (No 6A) dated 20 April 1883 (amended by SI 1991/1531); Order in Council (No 16), SR & O 1896/964 (amended by SI 1984/510; SI 1991/1531). A list of classified and authorised explosives signed by a government inspector is kept at the Home Office containing chemical definitions, and the explosives to which licences extend are defined by reference to this list. The list of the names of the explosives in the classified and authorised list, which is published from time to time by Her Majesty's Stationery Office, now includes, wherever possible, the United Nations classification and compatibility grouping.

UPDATE

901-923 The Legislation and the Administration

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

907 Authorised explosive

TEXT AND NOTES--SR & O 1896/964 revoked: SI 2005/1082.

Halsbury's Laws of England/EXPLOSIVES (VOLUME 17(2) (REISSUE))/1. THE LEGISLATION AND THE ADMINISTRATION/(1) THE STATUTES/(ii) Classification of Explosives, Exemptions and Special Powers/908. Classes.

(ii) Classification of Explosives, Exemptions and Special Powers

908. Classes.

The Explosives Act 1875 enables explosives to be classified and the composition, quality and character of any explosive to be defined by Order in Council¹. Where the explosive falls within the description of more than one class it is to be deemed to belong exclusively to the latest of the classes within the description of which it falls². The following are the classes so prescribed:

Class 1: *Gunpowder*. 'Gunpowder' means exclusively gunpowder ordinarily so called³.

Class 2: *Nitrate mixture*. 'Nitrate mixture' means any preparation other than gunpowder ordinarily so called, formed by the mechanical mixture of a nitrate with any form of carbon or with any carbonaceous substance not possessed of explosive properties, whether or not sulphur is added to such preparation, and whether or not such preparation is mechanically mixed with any other non-explosive substance, and it includes any explosive containing perchlorate not included in Classes 3, 4 or 5⁴.

Class 3: *Nitro-compound*. 'Nitro-compound' means any chemical compound possessed of explosive properties, or capable of combining with metals to form an explosive compound, which is produced by the chemical action of nitric acid (whether mixed or not with sulphuric acid) or of a nitrate mixed with sulphuric acid upon any carbonaceous substance, whether such compound is mechanically mixed with other substances or not. The class has two divisions⁵.

Class 4: *Chlorate mixture*. 'Chlorate mixture' means any explosive containing a chlorate. The class has two divisions⁶.

Class 5: *Fulminate*. 'Fulminate' means any chemical compound or mechanical mixture, whether included in the foregoing classes or not, which, from its great susceptibility to detonation, is suitable for employment in percussion caps or any other appliances for developing detonation, or which, from its extreme sensibility to explosion and from its great instability (that is, readiness to undergo decomposition from very slight exciting causes), is especially dangerous. The class has two divisions⁷.

Class 6: *Ammunition*. 'Ammunition' means an explosive of any of the foregoing classes when inclosed in any case or contrivance, or otherwise adapted or prepared so as to form a cartridge or charge for small arms, cannon or any other weapon, or for blasting, or to form any safety or other fuse⁸ for blasting, or for shells, or to form any tube for firing explosives, or to form a percussion cap⁹, a detonator¹⁰, a fog signal, a shell, a torpedo, a war rocket, or other contrivance other than a firework. The class has three divisions¹¹.

Class 7: *Firework*. 'Firework' comprises firework composition and manufactured fireworks which form the two divisions of this class¹². A sub-division of manufactured fireworks is 'shop goods'¹³. Fireworks are the subject of special legislation apart from the Explosives Act 1875¹⁴.

¹ Explosives Act 1875 s 106. Where the composition, quality or character of any explosive has been so defined, any article alleged to be such explosive which differs from the definition in composition, quality and character, whether by reason of deterioration or otherwise, is not to be deemed, for the purposes of the Act, to be explosive so defined: s 106. The power has been exercised by Order in Council (No 1) dated 5 August 1875 (amended by Order in Council (No 1A) dated 12 December 1891; Order in Council (No 1B), SR & O 1913/481; SI 1984/510). The examples given under each class in those Orders in Council are out of date and reference

should be made rather to the List of Classified and Authorised Explosives, published from time to time by Her Majesty's Stationery Office, from which the following notes on the classes are compiled.

For classification of explosives other than under the Explosives Act 1875 see the Classification and Labelling of Explosives Regulations 1983, SI 1983/1140 (as amended); and PARA 904 ante.

2 Order in Council (No 1) dated 5 August 1875 (as amended: see note 1 supra).

3 The definition is considered by the Explosives Inspectorate of the Health and Safety Executive to mean mixtures of nitrate of potassium or sodium, charcoal and sulphur, prepared in a particular fashion originally developed to provide a propellant for use in guns.

4 Order in Council (No 1B), SR & O 1913/481.

5 Division 1 comprises such explosives as nitro-glycerine, cordite, balistite, dynamite, and gelignite, with or without prefixes denoting that they are not liable to freeze, such as polar, eversoft, or antifrost; and any chemical compound or mechanically mixed preparation which consists either wholly or partly of nitro-glycerine or of some other liquid nitro-compound. Division 2 comprises such explosives as guncotton, collodion cotton, amatol, trinitrotoluene, picric acid, and any nitro-compound as before defined which is not comprised in Division 1. As to these examples see note 1 supra.

6 Division 1 comprises any chlorate preparation which consists partly of nitro-glycerine or of some other liquid nitro-compound. In the authorised list no explosive is named in this division. Division 2 comprises any chlorate mixture as before defined which is not comprised in Division 1.

7 Division 1 comprises such compounds as the fulminates of silver and of mercury, and preparations of these substances used in percussion caps; and any preparation consisting of a mixture of chlorate with phosphorus, or certain descriptions of phosphorus compounds, with or without the addition of carbonaceous matter, and any preparation consisting of a mixture of a chlorate with sulphur, or with a sulphuret, with or without carbonaceous matter. Division 2 comprises such substances as the chloride and the iodide of nitrogen, fulminating gold and silver, diazobenzol and the nitrate of diazobenzol.

8 'Safety fuse' means a fuse for blasting which burns and does not explode, does not contain its own means of ignition, and is of such strength and construction and contains explosive in such quantity that the burning of the fuse will not communicate laterally with other like fuses.

9 'Percussion cap' does not include a detonator.

10 'Detonator' means a capsule or case which is of such strength and construction and contains explosive of the fulminate-explosive class in such quantity that the explosion of one capsule or case will communicate the explosion to other like capsules or cases.

11 Division 1 comprises exclusively safety cartridges, safety fuses for blasting, railway fog signals, and percussion caps (ie explosives which are not liable to explosion in bulk). 'Safety cartridges' are defined by the Explosives Act 1875 s 108, as cartridges for small arms of which the case can be extracted from the small arm after firing, and which are so closed as to prevent any explosion in one cartridge being communicated to other cartridges.

Division 2 comprises any ammunition which does not contain its own means of ignition, and is not included in Division 1, such as cartridges for small arms (not being safety cartridges), cartridges and charges for cannon, shells, mines, depth charges, torpedoes, fuses for blasting which are not safety fuses, fuses for shells and tubes for firing explosives.

Division 3 comprises any ammunition which contains its own means of ignition, and is not included in Division 1, such as detonators, cartridges for small arms which are not safety cartridges, fuses for shells, fuses for blasting which are not safety fuses, filled bombs and the like.

'Ammunition containing its own means of ignition' means ammunition having an arrangement, whether attached to it or forming part of it, which is adapted to explode or fire the same by friction or percussion.

12 Order in Council (No 1) dated 5 August 1875 (amended by Order in Council (No 1A) dated 12 December 1891).

Division 1: 'firework composition' means any chemical compound or mechanically mixed preparation of an explosive or inflammable nature which is used for the purpose of making manufactured fireworks, and is not included in the former classes of explosives, and also any star and any coloured fire composition, subject to the proviso mentioned below.

Division 2: 'manufactured fireworks' consist of any explosive of the foregoing classes, and any firework composition, when such explosive or composition is inclosed in any case or contrivance, or is otherwise manufactured so as to form a squib, cracker, serpent, rocket (other than a war rocket), maroon, lance, wheel,

Chinese fire, Roman candle, or other article specially adapted for the production of pyrotechnic effects or pyrotechnic signals or sound signals.

The foregoing definitions are, however, subject to the proviso that a substantially constructed and hermetically closed metal case, containing not more than 1 lb of coloured fire composition of such a nature as not to be liable to spontaneous ignition is to be deemed to be a 'manufactured firework'.

13 Order in Council (No 16A), SR & O 1906/380 (amended by SI 1984/510). 'Shop goods' includes squibs, crackers, catherine wheels, small rockets, Roman candles, lances, and other similar fireworks which are not liable to explode violently, in contradistinction to shells, large rockets, rocket signals sets, and other similar fireworks used in displays or by ships in distress. See also PARA 965 note 8 post.

14 See the Fireworks Act 1951; and PARAS 951, 1015, 1030 post. As to small firework factories see PARAS 968-970 post. For safety regulations concerning the supply of fireworks see the Fireworks (Safety) Regulations 1997, SI 1997/2294; and SALE OF GOODS AND SUPPLY OF SERVICES vol 41 (2005 Reissue) PARA 604 et seq.

UPDATE

901-923 The Legislation and the Administration

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

908 Classes

TEXT AND NOTES 1-13--Replaced. Explosives are now defined by reference to the United Nations Recommendations on the Transport of Dangerous Goods Class 1: see PARA 924 NOTE 2.

NOTE 14--See also Fireworks Act 2003; Fireworks Regulations 2004, SI 2004/1836 (amended by SI 2004/3262); and PARAS 908A, 980, 982, 1015, 1021.

Halsbury's Laws of England/EXPLOSIVES (VOLUME 17(2) (REISSUE))/1. THE LEGISLATION AND THE ADMINISTRATION/(1) THE STATUTES/(ii) Classification of Explosives, Exemptions and Special Powers/908A. Fireworks regulations.

908A. Fireworks regulations.

1. Power to make regulations about fireworks

The Secretary of State¹ may by regulations ('fireworks regulations') make any provision which he considers appropriate for securing that there is no risk that the use of fireworks² will have specified consequences, or for securing that the risk that the use of fireworks will have those consequences is the minimum that is compatible with their being used³. The specified consequences are (1) the death of persons, or injury, alarm, distress or anxiety to persons; (2) the death of animals, or injury or distress to animals; and (3) the destruction of, or damage to, property⁴. Before making fireworks regulations, the Secretary of State must consult (a) the Health and Safety Executive⁵; (b) organisations which appear to the Secretary of State to be representative of interests substantially affected by the proposal; and (c) other persons whom the Secretary of State considers it appropriate to consult⁶. Before making fireworks regulations, the Secretary of State must also issue a full regulatory impact assessment setting out details of the costs and benefits and the wider economic, social and environmental impact of the proposed regulations⁷.

1 As to the Secretary of State see PARA 913.

2 'Fireworks' means devices which (1) are fireworks for the purposes of the British Standard Specification relating to fireworks published on 30 November 1988 (BS 7114), or any British Standard Specification replacing it; or (2) would be fireworks for those purposes if they were intended as a form of entertainment: Fireworks Act 2003 s 1(1).

3 Ibid s 2(1). The regulations must be made by statutory instrument: s 16(1). A statutory instrument containing fireworks regulations is subject to annulment in pursuance of a resolution of either House of Parliament: s 16(3). In exercise of these powers the Secretary of State has made the Fireworks Regulations 2004, SI 2004/1836 (as amended): see PARA 980.

4 Fireworks Act 2003 s 2(2).

5 As to the Health and Safety Executive see HEALTH AND SAFETY AT WORK vol 52 (2009) PARAS 361-371.

6 Fireworks Act 2003 s 2(3) (amended by SI 2008/960). The Secretary of State is not required to consult these parties if the regulations are to cease to have effect at the end of the period of not more than 12 months beginning with the day on which they come into force, and contain a statement that it appears to the Secretary of State that the need to protect the public requires that the regulations should be made without delay: 2003 Act s 2(5).

7 Ibid s 2(4). The power to make fireworks regulations includes power to make different provision for different cases, and to make any incidental, supplementary, consequential and transitional provision which the Secretary of State considers appropriate: s 2(6). The Consumer Protection Act 1987 s 18 (see SALE OF GOODS AND SUPPLY OF SERVICES vol 41 (2005 Reissue) PARA 554) applies in relation to fireworks regulations as in relation to regulations under s 11 (see SALE OF GOODS AND SUPPLY OF SERVICES vol 41 (2005 Reissue) PARA 539): Fireworks Act 2003 s 2(7). Nothing in the 2003 Act is to be construed as in any way limiting the provision that may be made in regulations under the 1987 Act: 2003 Act s 2(8). The Consumer Protection Act 1987 s 47 (see SALE OF GOODS AND SUPPLY OF SERVICES vol 41 (2005 Reissue) PARA 532) applies in relation to the 2003 Act: s 13.

2. Public fireworks displays

Fireworks regulations¹ may include provision prohibiting persons from operating a public fireworks display² unless (1) notice of the display has been given in accordance with the

regulations to any local or other authority to which the regulations require it to be given; (2) any other information relating to the display which is required by the regulations to be given to any local or other authority has been so given; (3) any fee imposed by any local or other authority in accordance with the regulations has been paid; and (4) such other conditions relating to the holding of public fireworks displays as are specified in the regulations have been complied with³.

Fireworks regulations may include provision prohibiting persons from operating public fireworks displays unless they satisfy (a) any conditions which are specified in the regulations and relate to the satisfactory completion of a course, or courses, of training relating to fireworks⁴ and to the means of proving the satisfactory completion of such a course or courses; or (b) any other conditions which are so specified⁵.

Fireworks regulations may include provision prohibiting persons from operating, or assisting in the operation of, public fireworks displays if they are below an age specified in the regulations⁶.

1 For the meaning of 'fireworks' and 'firework regulations' see PARA 908A.1.

2 'Public fireworks display' means a fireworks display at which the public, or any section of the public, are present, whether or not they have paid to be: Fireworks Act 2003 s 6(5).

3 Ibid s 6(1).

4 As to training courses relating to fireworks see PARA 908A.3.

5 Fireworks Act 2003 s 6(2).

6 Ibid s 6(3). If fireworks regulations impose any prohibition by virtue of s 6, they may contain exceptions from the prohibition, or contain provision for the granting of dispensations from the prohibition: s 6(4).

3. Training courses

The following provisions are not yet in force.

If fireworks regulations¹ specify conditions relating to the satisfactory completion of a course, or courses, of training about fireworks, they may make provision for courses to be provided by the Secretary of State², by a body or bodies established or recognised by the Secretary of State, or by licensed persons³. If fireworks regulations make provision for courses to be provided by licensed persons, they may (1) make provision for the licensing of persons by the Secretary of State or by any body or bodies established or recognised by the Secretary of State; (2) authorise the making by the Secretary of State of provision about the charging of fees for the grant or variation of licences; and (3) authorise the making by the Secretary of State, or by any such body or bodies, of provision about any of certain matters⁴. Those matters are (a) the grant, variation and revocation of licences; (b) conditions which may be attached to licences; and (c) appeals against refusals to grant or vary, or variations of, licences⁵.

Fireworks regulations may authorise the making by the Secretary of State of provision about the charging of fees for attendance at courses of training about fireworks, and the making by the Secretary of State, or by any body or bodies established or recognised by the Secretary of State under these provisions, of provision about any of certain matters⁶. Those matters are (i) the descriptions of persons who are to be eligible to attend courses of training about fireworks; (ii) the subject matter to be covered by courses and the conduct of courses; (iii) the criteria to be applied in determining whether persons have satisfactorily completed courses; (iv) the form and content of certificates to be awarded to persons who have satisfactorily completed courses; (v) appeals against refusals to award certificates to persons who have attended courses; and (vi) the keeping of records about persons who have attended courses⁷.

- 1 For the meaning of 'fireworks' and 'firework regulations' see PARA 908A.1.
- 2 As to the Secretary of State see PARA 913.
- 3 Fireworks Act 2003 s 10(1).
- 4 Ibid s 10(2).
- 5 Ibid s 10(3).
- 6 Ibid s 10(4).
- 7 Ibid s 10(5).

UPDATE

901-923 The Legislation and the Administration

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

Halsbury's Laws of England/EXPLOSIVES (VOLUME 17(2) (REISSUE))/1. THE LEGISLATION AND THE ADMINISTRATION/(1) THE STATUTES/(ii) Classification of Explosives, Exemptions and Special Powers/909. Exemptions.

909. Exemptions.

The Explosives Act 1875 does not apply to:

- 1 (1) any factory, magazine¹, store², premises, wharf³, place or explosive⁴ under the control of the Secretary of State or a government department⁵ or otherwise held for the service of the Crown or a visiting force⁶, or the manufacture, keeping or importation of such explosive⁷;
- 2 (2) ships, boats⁸, carriages⁹ and aircraft¹⁰ of Her Majesty or of a visiting force or international headquarters¹¹;
- 3 (3) the keeping, making up or adapting for use of any explosive issued by or for the use of any naval or marine reserve, provided it is done in accordance with regulations of the Secretary of State¹²;
- 4 (4) any approved¹³ storehouse appointed for receiving such explosive¹⁴; or
- 5 (5) the conveyance of any explosive under the control of a Secretary of State or other government department, or otherwise held for the service of the Crown when it is being conveyed in accordance with regulations made by a Secretary of State or other government department¹⁵.

Notwithstanding these provisions, any person who enters without permission or otherwise trespasses upon any such factory, magazine or storehouse or the land immediately adjoining it in the occupation of the Crown, a Secretary of State or a government department, or if it adjoins such a storehouse in the occupation of the officer or person in whom such storehouse is vested, and any person found committing any act tending to cause explosion or fire in or about such factory, magazine or storehouse, may be removed and arrested in the same manner, and is liable to the same penalty, as if the Act applied to those premises¹⁶.

The owner or master¹⁷ of a ship or boat, or a carrier¹⁸ or warehouseman¹⁹, or the person²⁰ having charge of any carriage, is exempted from liability to penalty or forfeiture under the provisions of the Act or of any statutory order under it²¹ for any act done in breach of those provisions, if he proves that by reason of stress of weather, inevitable accident or other emergency the doing of the act was, in the circumstances, necessary and proper²².

Any gunpowder, rockets or other explosive on board a ship in pursuance of the Merchant Shipping Act 1995, or any order or regulation made under it, are exempt from the Explosives Act 1875 and any statutory order made under it except harbour byelaws²³. The Explosives Act 1875 and statutory orders under it do not apply to the keeping of rockets for use in life-saving apparatus under the control of the Secretary of State²⁴, nor to the keeping of explosives for signalling at or near a station on the sea coast under the control of any general lighthouse authority²⁵.

Exemptions has also been conferred by orders declaring certain substances not to be explosives subject to specified conditions; these cover compressed acetylene mixed with oil-gas²⁶.

1 'Magazine' includes any ship (defined in note 8 *infra*) or hovercraft or other vessel used for the purpose of keeping any explosive: Explosives Act 1875 s 108; Hovercraft Act 1968 s 3, Schedule para 2.

2 'Store' means an existing (ie existing on 14 June 1875) gunpowder store as defined in PARA 961 post, or a place for keeping an explosive licensed by a local authority (see PARA 924 et seq post): Explosives Act 1875 s 108.

3 'Wharf' includes any quay, landing place, siding or other place at which goods are landed, loaded or unloaded: *ibid* s 108.

4 For the meaning of 'explosive' see PARA 905 ante.

5 'Government department' has been extended to include the United Kingdom Atomic Energy Authority: Atomic Energy Authority Act 1954 s 6(4), Sch 3: see FUEL AND ENERGY vol 19(3) (2007 Reissue) PARA 1363. As to the Secretary of State see PARA 913 post. 'United Kingdom' means Great Britain and Northern Ireland: Interpretation Act 1978 s 5, Sch 1. 'Great Britain' means England, Scotland and Wales: Union with Scotland Act 1706, preamble art I; Interpretation Act 1978 s 22(1), Sch 2 para 5(a). Neither the Channel Islands nor the Isle of Man are within the United Kingdom. See further CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 3.

6 Visiting Forces and International Headquarters (Application of Law) Order 1999, SI 1999/1736, art 12(2), Sch 6.

7 Explosives Act 1875 s 97(1) (amended by the Statute Law Revision (No 2) Act 1893; and the Statute Law Revision Act 1966).

8 'Ship' includes every description of vessel used in sea navigation, whether propelled by oars or otherwise and includes a hovercraft used at sea; 'boat' includes every description of vessel not a ship as so defined used in navigation in any inland water or harbour and includes a hovercraft used in any inland water or harbour: Explosives Act 1875 s 108; Hovercraft Act 1968 ss 3, 4(3), Schedule para 2. In determining whether a vessel is a ship or a boat, the method of propulsion is not material.

9 'Carriage' includes any carriage, wagon, cart, truck, vehicle or other means of conveying goods or passengers by land, however propelled: Explosives Act 1875 s 108.

10 For this particular purpose, 'ships' is extended to include aircraft: Air Force (Application of Enactments) (No 2) Order 1918, SR & O 1918/548, reg 1, Schedule.

11 Explosives Act 1875 s 97(2); Visiting Forces and International Headquarters (Application of Law) Order 1999, SI 1999/1736, art 12(2), Sch 6.

12 Explosives Act 1875 s 97(3) (amended by the Defence (Transfer of Functions) (No 1) Order 1964, SI 1964/488, art 2, Sch 1 Pt I; the Statute Law Revision (No 2) Act 1893; and the Statute Law Revision Act 1966).

13 Ie approved by the Secretary of State as a fit place for the storing of such explosive, and managed in accordance with the regulations of a Secretary of State for the management of such storehouses or the like storehouses appointed for the use of Her Majesty's army or navy: Explosives Act 1875 s 97(4) (amended by the Defence (Transfer of Functions) (No 1) Order 1964, art 2, Sch 1 Pt I; the Statute Law Revision (No 2) Act 1893; and the Statute Law Revision Act 1966).

14 Explosives Act 1875 s 97(4) (as amended: see note 13 supra).

15 *Ibid* s 97(5) (repealed, in relation to the conveyance of explosives by road, by SI 1989/615. See now the Road Traffic (Carriage of Explosives) Regulations 1989, SI 1989/2093; and PARA 999 et seq post.

16 Explosives Act 1875 s 97 proviso (amended by the Statute Law Revision Act 1966; repealed, in relation to the carriage of explosives by road, by SI 1989/615).

17 'Master' includes every person (except a pilot) having command or charge of a ship, and in reference to any boat belonging to a ship means the master of the ship; and when used in reference to any other boat includes any person having command or charge of it: Explosives Act 1875 s 108. See also note 8 supra.

18 'Carrier' includes all persons carrying goods or passengers for hire by land or water: *ibid* s 108.

19 'Warehouseman' includes all persons owning or managing a warehouse, store, wharf or other premises in which goods are deposited: *ibid* s 108.

20 'Person' includes a body corporate: *ibid* s 108.

21 As to the scope of the term 'statutory order' see PARA 903 ante.

22 Explosives Act 1875 s 100.

23 Ibid s 101 (amended by the Merchant Shipping Act 1995 s 314(2), Sch 13 para 5(c)). The Merchant Shipping Act 1995 s 87 places certain restrictions on the shipment of dangerous goods which are cumulative with other enactments for the same object: see SHIPPING AND MARITIME LAW vol 94 (2008) PARA 656. As to harbour byelaws see PARA 990 post.

24 Explosives Act 1875 s 98(1) (amended by the Statute Law Revision (No 2) Act 1893; and the Defence (Transfer of Functions) (No 1) Order 1964, art 2, Sch 1 Pt I). The Explosives Act 1875 s 98(1) (as amended) refers to 'the Secretary of State or the Board of Trade'. In practice, references to the Board of Trade may now be read as references to the President of the Board of Trade, and latterly to the Secretary of State for Trade and Industry: see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 505.

25 Ibid s 98(2) (amended by the Merchant Shipping Act 1995 s 314, Sch 13 para 5(b)). As to general lighthouse authorities see the Merchant Shipping Act 1995 ss 193-197 (as amended); and SHIPPING AND MARITIME LAW vol 94 (2008) PARA 1068 et seq.

26 Order of the Secretary of State (No 5), SR & O 1898/248 (amended by SI 1984/510); Order of the Secretary of State (No 5A), SR & O 1905/1128 (amended by SI 1984/510). Acetylene mixed with oil-gas (ie mineral oil) is exempt (1) if the proportion of acetylene does not exceed one-fifth of the total mixture and the mixture is not subjected to a pressure exceeding 150 lb per square inch, or (2) if (a) the acetylene is generated by the Atkins Dry Process; (b) the proportion of acetylene is not greater than one-half of the total mixture; and (c) the mixture is not compressed to a pressure exceeding 150 lb per square inch; provided, in either case, that the acetylene and oil-gas are mixed together in a chamber or vessel before the gases are subjected to pressure.

UPDATE

901-923 The Legislation and the Administration

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

909 Exemptions

NOTE 2--'Store' means a place for keeping an explosive: 1875 Act s 108 (amended by SI 2005/1082).

TEXT AND NOTES 12-14--Heads (3), (4) omitted (1875 Act s 97(3), (4) repealed by SI 2005/1082).

TEXT AND NOTE 16--1875 Act s 97 proviso repealed: SI 2005/1082.

TEXT AND NOTE 23-25--Repealed: SI 2005/1082.

Halsbury's Laws of England/EXPLOSIVES (VOLUME 17(2) (REISSUE))/1. THE LEGISLATION AND THE ADMINISTRATION/(1) THE STATUTES/(ii) Classification of Explosives, Exemptions and Special Powers/910. Special uses.

910. Special uses.

It is not necessary to take out a licence or to register any premises for the keeping of fog signals for use on a railway or of any other explosive prescribed by Order in Council, and byelaws need not be made for the conveyance, loading or unloading of such explosives¹. On the other hand there is power by Order in Council to require that licences be taken out or byelaws made for these explosives². Further, Orders in Council may exempt these explosives or any description of them from any other provisions of the Explosives Act 1875³.

1 Explosives Act 1875 s 50 (this part of s 50 amended by the Control of Explosives Regulations 1991, SI 1991/1531, reg 19(1), Sch 4 Pt I).

2 See the Explosives Act 1875 s 50. At the date at which this volume states the law, no such Order in Council had been made.

3 Ibid s 50. Under this power percussion caps and safety fuses for blasting when sold or exposed for sale need not have 'Explosive' marked on the outer package: Order in Council (No 9) dated 27 November 1875. Explosive consisting of absorbent carbonaceous material impregnated with liquid air or oxygen with or without the addition of other substances is exempt from the requirements of the Explosives Act 1875 as to manufacture, provided that a licence to manufacture is obtained from the Health and Safety Executive and its conditions complied with, and that no other material than as above is used unless authorised by the licence: Liquid Oxygen Explosives Order 1928, SR & O 1928/1045, reg 1 (amended by SI 1974/1885). Certain ammonium nitrate mixtures are explosives for the purposes of the Explosives Act 1875 s 50 (as amended: see note 1 ante), and are exempted from the requirements of the Act as to manufacture provided that a licence to manufacture is obtained from the Secretary of State and any requirement imposed by it complied with: Ammonium Nitrate Mixtures Exemption Order 1967, SI 1967/1485, reg 3. For fees in relation to the grant of a licence under that Order see the Health and Safety (Fees) Regulations 1999, SI 1999/645. As to the Health and Safety Executive see HEALTH AND SAFETY AT WORK vol 52 (2009) PARAS 361-371.

UPDATE

901-923 The Legislation and the Administration

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

910 Special uses

TEXT AND NOTES--Repealed: SI 2005/1082.

Halsbury's Laws of England/EXPLOSIVES (VOLUME 17(2) (REISSUE))/1. THE LEGISLATION AND THE ADMINISTRATION/(1) THE STATUTES/(ii) Classification of Explosives, Exemptions and Special Powers/911. Specially dangerous explosives.

911. Specially dangerous explosives.

Her Majesty may by Order in Council prohibit, either absolutely, or except in pursuance of a licence of the Health and Safety Executive¹, or may subject to conditions or restrictions, the manufacture, keeping, importation, conveyance and sale of any explosive² which is of so dangerous a character that it is expedient for the public safety to make such order³. This power has been exercised so as to prohibit the manufacture, keeping, importation, conveyance and sale of some explosives except with the consent of and subject to conditions approved by an inspector appointed under the Health and Safety Executive⁴, and of others unless specially licensed by the Health and Safety Executive for manufacture and importation and named and defined in the list of classified and authorised explosives⁵.

Any explosive manufactured or kept in contravention of any such order is deemed to be manufactured or kept in an unauthorised place⁶; any explosive conveyed in contravention of any such order is deemed to be conveyed in contravention of a byelaw⁷ with respect to the conveyance of explosives; and if any explosive is imported or sold in contravention of any such order, the owner or master of the ship⁸ in which it was imported, the person to whom it was delivered and the person selling it are each guilty of an offence⁹.

1 As to the Health and Safety Executive see HEALTH AND SAFETY AT WORK vol 52 (2009) PARAS 361-371.

2 For the meaning of 'explosive' see PARA 905 ante.

3 Explosives Act 1875 s 43 (amended by the Explosives Acts 1875 and 1923 etc (Repeals and Modifications) Regulations 1974, SI 1974/1885, regs 2(b), 9, Sch 2 para 3).

4 See *ibid* reg 3(1). As to the appointment of such inspectors see PARA 914 post.

5 Order in Council (No 6A) dated 20 April 1883 (revoked in part: see now the Control of Explosives Regulations 1991, SI 1991/1531 (as amended) (stores licensed for mixed explosives); Order in Council (No 15), SR & O 1894/517 (prohibiting fireworks containing sulphur with a chlorate); Order in Council (No 16), SR & O 1896/964 (amended by SI 1984/510; and revoked in part: see now the Control of Explosives Regulations 1991, SI 1991/1531 (as amended) (stores licensed for mixed explosives) (premises registered for mixed explosives); Order in Council (No 19), SR & O 1905/8 (amended by SI 1974/1885) (prohibiting fireworks containing phosphorus with a chlorate); Order in Council (No 30), SR & O 1937/54 (amended by SR & O 1947/805; SI 1974/1885) (prohibiting acetylene when an explosive as defined); and the Control of Explosives Regulations 1991, SI 1991/1531 (as amended).

As to the list of classified and authorised explosives see PARA 908 note 1 ante.

6 As to such manufacture or keeping see PARAS 925, 927 post.

7 As to such byelaws see PARA 990 et seq post.

8 For the meaning of 'master' and 'ship' see PARA 909 notes 17, 8, respectively ante.

9 Explosives Act 1875 s 43 (amended by the Explosives Acts 1875 and 1923 etc (Repeals and Modifications) Regulations 1974, SI 1974/1885, regs 2(b), 9, Sch 2 para 15.) As to the penalties for such an offence see PARA 1017 post. For the meaning of 'person' see PARA 909 note 20 ante.

UPDATE

901-923 The Legislation and the Administration

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

911-912 Specially dangerous explosives, Special powers

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

911 Specially dangerous explosives

TEXT AND NOTE 1--Words 'either ... Executive' omitted: 1875 Act s 43 (amended by SI 2005/1082).

NOTE 3--SR & O 1894/517, SR & O 1896/964, SR & O 1905/8 revoked: SI 2005/1082.

NOTE 5--SR & O 1937/54 further amended: SI 2005/1082. SI 1991/1531 further amended: SI 2005/1082, SI 2009/693.

TEXT AND NOTES 6-8--Words 'Any explosive ... conveyance of explosives; and' omitted: 1875 Act s 43 (amended by SI 2005/1082).

Halsbury's Laws of England/EXPLOSIVES (VOLUME 17(2) (REISSUE))/1. THE LEGISLATION AND THE ADMINISTRATION/(1) THE STATUTES/(ii) Classification of Explosives, Exemptions and Special Powers/912. Special powers.

912. Special powers.

In addition to the control imposed by the Explosives Act 1875, the Secretary of State¹ may by order impose such prohibitions or restrictions on the use of gunpowder and safety fuses and the transfer, whether for consideration or not, of the possession of them or property in them as appear to him to be necessary or expedient in the public interest². He may prohibit by order the doing of anything restricted by the order except under the authority of a licence granted by a specified person³. Further, he can require by order, subject to any exemptions provided by the order, any person entering into a prescribed transaction in respect of an explosive⁴ to make and keep for the prescribed period a record containing the prescribed particulars of the transaction and to produce the record to such person and in such circumstances as may be prescribed⁵. An order may make provision for any incidental or supplementary matter⁶. A person who contravenes, or fails to comply with, an order is guilty of an offence⁷.

1 As to the Secretary of State see PARA 913 post.

2 Emergency Laws (Miscellaneous Provisions) Act 1953 s 3(1). Before making such an order the Secretary of State must consult with the Health and Safety Commission in accordance with the provisions of the Health and Safety at Work etc Act 1974 s 50 (as amended) (see HEALTH AND SAFETY AT WORK vol 52 (2009) PARA 350): Emergency Laws (Miscellaneous Provisions) Act 1953 s 3(6) (amended by the Explosives Acts 1875 and 1923 etc (Repeals and Modifications) Regulations 1974, SI 1974/1885, reg 7(1)(b)).

3 Emergency Laws (Miscellaneous Provisions) Act 1953 s 3(1).

4 For this purpose 'explosive' means gunpowder, safety fuses and any explosive to which an Order in Council under the Explosives Act 1875 s 43 (as amended) (see PARA 911 ante), for the time being applies, and 'prescribed' means prescribed by the order: Emergency Laws (Miscellaneous Provisions) Act 1953 s 3(2).

5 Ibid s 3(2). See also PARA 979 post.

6 Ibid s 3(3).

7 Ibid s 3(4) (amended by the Explosives Acts 1875 and 1923 etc (Repeals and Modifications) Regulations 1974, SI 1974/1885, reg 7(1)(a)). As to the penalties for such an offence see PARA 1017 post.

UPDATE

901-923 The Legislation and the Administration

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

911-912 Specially dangerous explosives ... Special powers

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

912 Special powers

TEXT AND NOTES--Repealed: SI 2005/1082.

Halsbury's Laws of England/EXPLOSIVES (VOLUME 17(2) (REISSUE))/1. THE LEGISLATION AND THE ADMINISTRATION/(2) THE ADMINISTRATION/(i) Central Administration/913. The Secretary of State.

(2) THE ADMINISTRATION

(i) Central Administration

913. The Secretary of State.

In law, 'Secretary of State' means one of Her Majesty's principal Secretaries of State¹. Accordingly, many modern statutes refer simply to the 'Secretary of State' without referring to a particular department or ministry².

In relation to explosives, functions conferred under the Explosives Act 1875 and related legislation on the Secretary of State are in practice exercised by or under the authority of the Health and Safety Executive³.

However the Secretary of State for Defence⁴ and the Secretary of State for Trade and Industry⁵ also have some responsibility under the explosives legislation.

1 See the Interpretation Act 1978 s 5, Sch 1.

2 As to the office of the Secretary of State see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 355.

3 The Health and Safety Executive must exercise on behalf of the Health and Safety Commission such of the Commission's functions as the Commission directs and must also give effect to any other directions of the Commission: see the Health and Safety at Work etc Act 1974 s 11. In July 1995, the Health and Safety Commission's responsibilities came under the aegis of the Department of the Environment (Transfer of Functions (Education and Employment) Order 1995, SI 1995/2986), which has since become part of the Department of the Environment, Transport and the Regions: see the Civil Service Year Book 1999, column 446. As to the Health and Safety Executive see HEALTH AND SAFETY AT WORK vol 52 (2009) PARAS 361-371.

5 See eg the Classification and Labelling of Explosives Regulations 1983, SI 1983/1140 (as amended); para 904 ante.

6 See, for example, the Explosives Act 1875 s 58(b) (as amended); the Transfer of Functions (Shipping and Construction of Ships) Order 1965, SI 1965/145; para 917 post; and CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 505 et seq. References to the Board of Trade may now be read as references to the President of the Board of Trade, and latterly to the Secretary of State for Trade and Industry: see PARA 909 ante; and CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 505.

UPDATE

901-923 The Legislation and the Administration

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

913 The Secretary of State

NOTE 6--1875 Act s 58 repealed: SI 2005/1082.

Halsbury's Laws of England/EXPLOSIVES (VOLUME 17(2) (REISSUE))/1. THE LEGISLATION AND THE ADMINISTRATION/(2) THE ADMINISTRATION/(i) Central Administration/914. Inspectors.

914. Inspectors.

The powers and duties conferred and imposed by the Explosives Act 1875 are exercised by inspectors appointed by the Health and Safety Executive¹ or any other authority which is made responsible for the enforcement of the provisions of that Act².

1 As to the Health and Safety Executive see HEALTH AND SAFETY AT WORK vol 52 (2009) PARAS 361-371. In practice, these functions are exercised by the Explosives Inspectorate of the Health and Safety Executive.

2 See the Health and Safety at Work etc Act 1974 s 18 (as amended), s 19, s 53(1), Sch 1; and the Explosives Acts 1875 and 1923 etc (Repeals and Modifications) Regulations 1974, SI 1974/1885, regs 2(b), 3(1), Sch 2 para 5. As to the appointment of such inspectors see further HEALTH AND SAFETY AT WORK vol 52 (2009) PARA 375.

UPDATE

901-923 The Legislation and the Administration

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

914 Inspectors

TEXT AND NOTES--Most of Explosives Act 1875 replaced by Manufacture and Storage of Explosives Regulations 2005, SI 2005/1082 (see PARAS 924A-924E).

Halsbury's Laws of England/EXPLOSIVES (VOLUME 17(2) (REISSUE))/1. THE LEGISLATION AND THE ADMINISTRATION/(2) THE ADMINISTRATION/(i) Central Administration/915. Powers of inspectors.

915. Powers of inspectors.

The general powers of inspectors to carry into effect any of the provisions of the Explosives Act 1875 within the field of responsibility of the enforcing authority¹ are set out in the Health and Safety at Work etc Act 1974². In particular, an inspector may serve an improvement notice³ and a prohibition notice⁴, and he has power to seize and cause to be rendered harmless (whether by destruction or otherwise) any article or substance found by him in any premises and which he has reasonable cause to believe, in the circumstances in which he finds it, is a cause of imminent danger of serious personal injury⁵.

1 le the Health and Safety Executive or any other authority which is by any of the relevant statutory provisions or by regulations of the Secretary of State made responsible for the enforcement of any of those provisions to any extent: see the Health and Safety at Work etc Act 1974 s 18(2), (7)(a); and HEALTH AND SAFETY AT WORK vol 52 (2009) PARAS 370-371. As to the Health and Safety Executive see HEALTH AND SAFETY AT WORK vol 52 (2009) PARAS 361-371.

2 See *ibid* ss 20, 21, 22 (as amended), 25; and HEALTH AND SAFETY AT WORK vol 52 (2009) PARA 376 et seq.

3 See *ibid* s 21; and HEALTH AND SAFETY AT WORK vol 52 (2009) PARA 377. As to service of notices generally see PARA 919 post.

4 See *ibid* s 22 (as amended); and HEALTH AND SAFETY AT WORK vol 52 (2009) PARA 378.

5 See *ibid* s 25; and HEALTH AND SAFETY AT WORK vol 52 (2009) PARA 380.

UPDATE

901-923 The Legislation and the Administration

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

Halsbury's Laws of England/EXPLOSIVES (VOLUME 17(2) (REISSUE))/1. THE LEGISLATION AND THE ADMINISTRATION/(2) THE ADMINISTRATION/(i) Central Administration/916. Samples.

916. Samples.

An inspector¹ appointed by the Health and Safety Executive² and any other person authorised by him for the purpose, may keep and convey any sample taken for the purposes of the Explosives Act 1875 by or by the authority of the inspector, provided that the amount does not exceed what is reasonably necessary for the performance of his duties and it is kept and carried with all due precautions to prevent accident³. The inspector or person is exempt from all criminal liability for keeping or conveying such a sample⁴.

1 As to inspectors see PARA 914 ante.

2 He appointed under the Health and Safety at Work etc Act 1974 s 19. As to the Health and Safety Executive see HEALTH AND SAFETY AT WORK vol 52 (2009) PARAS 361-371.

3 Explosives Act 1875 s 61 (amended by the Explosives Acts 1875 and 1923 etc (Repeals and Modifications) Regulations 1974, SI 1974/1885, reg 2(b), Sch 2 para 5).

4 Explosives Act 1875 s 61.

UPDATE

901-923 The Legislation and the Administration

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

Halsbury's Laws of England/EXPLOSIVES (VOLUME 17(2) (REISSUE))/1. THE LEGISLATION AND THE ADMINISTRATION/(2) THE ADMINISTRATION/(i) Central Administration/917. Other inspectors.

917. Other inspectors.

Persons acting under the Secretary of State¹ as inspectors of railways may be ordered by him to inquire into the observance of the Explosives Act 1875 by any railway or canal undertaking² and generally to act with respect to any railway³ or canal⁴ as an inspector under the Act⁵. Persons appointed as inspectors by the Secretary of State under the Merchant Shipping Act 1995⁶ may be similarly ordered to act in any harbour and with respect to any ships⁷. While any such order is in force these inspectors have their original powers and also the powers conferred on inspectors by the Health and Safety at Work etc Act 1974⁸.

1 As to the Secretary of State see PARA 913 ante.

2 The expressions used in the Explosives Act 1875 s 58(a), are 'railway company' and 'canal company'. 'Railway company' means any person or body of persons, corporate or unincorporate, being the owner or lessee or owners or lessees of or working any railway worked by steam or otherwise than by animal power in the United Kingdom, constructed or carried on under the powers of any Act of Parliament and used for public traffic: s 108. 'Canal company' means any person or body of persons, corporate or unincorporate, being the owner or lessee or owners or lessees of, or working, or entitled to charge tolls for the use of any canal in the United Kingdom, constructed or carried on under the powers of any Act of Parliament, or intrusted with the duty of conserving, maintaining or improving the navigation of any inland water: s 108. For the meaning of 'United Kingdom' see PARA 909 note 5 ante.

3 'Railway' includes every building, station, wharf (defined in PARA 909 note 3 ante), dock and place belonging to or under the control of a railway undertaking: ibid s 108.

4 'Canal' includes any inland water in respect of which a canal undertaking has duties, and any wharf, dock, pier, jetty and work in or at which barges do or can ship or unship goods or passengers, and other area, whether land or water, belonging to or under the control of a canal undertaking: ibid s 108. 'Inland water' means any canal, river, navigation, lake or water which is not tidal water (defined in PARA 921 note 5 post): s 108.

5 Ibid s 58(a).

6 ie under the Merchant Shipping Act 1995 s 314, Sch 13 para 5.

7 Explosives Act 1875 s 58(b) (amended by the Merchant Shipping Act 1995 s 314(2), Sch 13 para 5(a)). For the meaning of 'ship' see PARA 909 note 8 ante.

8 Explosives Act 1875 s 58 (amended by the Explosives Acts 1875 and 1923 etc (Repeals and Modifications) Regulations 1974, SI 1974/1885, reg 2(b), Sch 2 para 16). As to the powers conferred by the Health and Safety at Work etc Act 1974 see PARA 915 ante.

UPDATE

901-923 The Legislation and the Administration

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

917 Other inspectors

TEXT AND NOTES--Repealed: SI 2005/1082.

Halsbury's Laws of England/EXPLOSIVES (VOLUME 17(2) (REISSUE))/1. THE LEGISLATION AND THE ADMINISTRATION/(2) THE ADMINISTRATION/(i) Central Administration/918. Fees.

918. Fees.

Fees are payable for licences and continuing certificates granted by the Secretary of State¹ and for licences granted by the Health and Safety Executive².

¹ See the Explosives Act 1875 s 26 (amended by the Local Government Act 1972 s 272(1), Sch 30; the Explosives Acts 1875 and 1923 etc (Repeals and Modifications) Regulations 1974, SI 1974/1885, regs 2(a), 9, Sch 1; the Explosives and Related Matters (Fees) Regulations 1983, SI 1983/1450, reg 3; and the Health and Safety (Explosives and Petroleum Fees) (Modification) Regulations 1987, SI 1987/52, reg 2, Sch 1). Fees for import licences are charged under the Health and Safety (Fees) Regulations 1999, SI 1999/645.

² Explosives Acts 1875 and 1923 etc (Repeals and Modifications) Regulations 1974, SI 1974/1885, reg 2(b), Sch 2 para 12. As to the Health and Safety Executive see HEALTH AND SAFETY AT WORK vol 52 (2009) PARAS 361-371.

UPDATE

901-923 The Legislation and the Administration

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

918 Fees

NOTE 1--1875 Act s 26 repealed: SI 2005/1082. SI 1999/645 now Health and Safety (Fees) Regulations 2009, SI 2009/515 (see PARA 904).

Halsbury's Laws of England/EXPLOSIVES (VOLUME 17(2) (REISSUE))/1. THE LEGISLATION AND THE ADMINISTRATION/(2) THE ADMINISTRATION/(i) Central Administration/919. Notice and service.

919. Notice and service.

Any notice or document required or authorised to be served on or given to an inspector¹ may be served² or given by delivering it to him or by leaving it at, or sending it by post³ to, his office⁴. Any such notice or document required or authorised to be served on or given to a person other than an inspector may be served or given by delivering it to him, or by leaving it at his proper address⁵, or by sending it by post to him at that address⁶. Any such notice or document required or authorised to be served on or given to the owner or occupier of any premises⁷ may be served or given by sending it by post to him at those premises, or addressing it by name to the person on or to whom it is to be served or given and delivering it to some responsible person who is or appears to be resident or employed in the premises⁸.

A notice given in respect of a fireworks factory⁹ may be served by delivering it to the occupier of the factory or by sending it in a prepaid registered letter or by the recorded delivery service¹⁰ addressed to him at the factory to which it relates, or where the occupier is a company, by delivering it to the clerk or secretary at the registered office, or sending it in a prepaid registered letter or by the recorded delivery service to the company at that office¹¹.

1 As to inspectors see PARA 914 ante.

2 As this provision is permissive, where a notice is served in a different manner and is received, this constitutes a good service: see *Sharpley v Manby* [1942] 1 KB 217, sub nom *Re Sharpley and Manby Arbitration* [1942] 1 All ER 66, CA; and *Stylo Shoes Ltd v Prices Tailors Ltd* [1960] Ch 396, [1959] 3 All ER 901.

3 See the Interpretation Act 1978 s 7, Sch 2 para 3. As to proof of posting see generally CIVIL PROCEDURE vol 11 (2009) PARA 945.

4 Health and Safety at Work etc Act 1974 s 46(1), (8).

5 I.e. his last known address, except that in the case of a body corporate or its secretary or clerk, it is the address of the registered or principal office of that body, or in the case of a partnership or a person having the control or management of the partnership business, it is the principal office of the partnership: *ibid* s 46(4); however, if the person to be served with or given any such notice has specified an address within the United Kingdom other than his proper address as the one at which he or someone on his behalf will accept notices of the same description as that notice, that address is to be treated as his proper address: s 46(5). For the meaning of 'United Kingdom' see PARA 909 note 5 ante.

6 *Ibid* s 46(2), (8). Documents may be served, in the case of a body corporate, on the secretary or clerk and, in the case of a partnership, on the partner or person having the control or management of the partnership business: s 46(3).

7 If the name or address of any owner or occupier of the premises cannot after reasonable inquiry be ascertained, the notice or document may be served or given by addressing it to the person on or to whom it is to be served or given by the description of 'owner' or 'occupier' of the premises (describing them) to which the notice or document relates, and by delivering it to some responsible person who is or appears to be resident or employed in the premises, or, if there is no such person to whom it can be delivered, by affixing it or a copy of it to some conspicuous part of the premises: *ibid* s 46(7).

8 *Ibid* s 46(6), (8).

9 As to control of the manufacture of fireworks see PARAS 951, 952 post.

10 See the Recorded Delivery Service Act 1962 s 1(1); and POST OFFICE vol 36(2) (Reissue) PARA 92.

11 Fireworks Act 1951 s 8.

UPDATE

901-923 The Legislation and the Administration

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

Halsbury's Laws of England/EXPLOSIVES (VOLUME 17(2) (REISSUE))/1. THE LEGISLATION AND THE ADMINISTRATION/(2) THE ADMINISTRATION/(i) Central Administration/920. Civil defence.

920. Civil defence.

The Secretary of State¹ has power to make byelaws, as to the use of land held for military purposes and for securing public safety, under the Military Lands Act 1892² and the Military Lands Act 1900³.

- 1 As to the Secretary of State see PARA 913 ante.
- 2 See the Military Lands Act 1892 s 14; and ARMED FORCES.
- 3 See the Military Lands Act 1900 s 2 (as amended); and ARMED FORCES.

UPDATE

901-923 The Legislation and the Administration

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

Halsbury's Laws of England/EXPLOSIVES (VOLUME 17(2) (REISSUE))/1. THE LEGISLATION AND THE ADMINISTRATION/(2) THE ADMINISTRATION/(ii) Local Administration/921. Local authorities.

(ii) Local Administration

921. Local authorities.

The local authorities for the purposes of the Explosives Act 1875 in England and Wales are (1) in the City of London, the court of the Lord Mayor and aldermen¹; (2) in a London borough, the council of that borough²; (3) outside Greater London and a metropolitan county, the council of a county or county borough³; (4) in a metropolitan county, the fire authority⁴; (5) in any harbour⁵ within the jurisdiction of a harbour authority, whether or not within the jurisdiction of any of the foregoing local authorities, the harbour authority, to the exclusion of any other local authority⁶.

1 Explosives Act 1875 s 67(1).

2 London Government Act 1963 s 50(1). This does not affect the jurisdiction exercisable in any harbour wholly or partly in Greater London by a harbour authority: s 50(3) (as amended) (see LONDON GOVERNMENT). See also the text and note 5 infra.

3 Explosives Act 1875 s 67(3) (amended by the Local Government Act 1972 s 251(2), Sch 29 para 19; the Local Government Act 1985 s 37, Sch 11 para 3; the Local Government (Wales) Act 1994 s 66(6), Sch 16 para 3). In the Scilly Isles, the local authority for this purpose is the Council of the Isles of Scilly: Isles of Scilly (Functions) Order 1979, SI 1979/72 (amended by SI 1990/2486).

4 Explosives Act 1875 s 67(3A) (added by the Local Government Act 1985 s 37, Sch 11 para 3). As to fire authorities see generally FIRE SERVICES.

5 'Harbour' includes any harbour, port, haven, estuary, tidal water in respect of which a harbour authority has duties (see note 6 infra), and any wharf (defined in PARA 909 note 3 ante), dock, pier, jetty and work, and other area, whether land or water, over which the authority has control or exercises powers: Explosives Act 1875 s 108. 'Tidal water' means any part of the sea or of a river within the ebb and flow of the tides at ordinary spring tides: s 108.

6 Ibid s 67(4). 'Harbour authority' means any body being or claiming to be proprietors of, or having the duty or power of improving, managing, maintaining or regulating any harbour properly so called, whether natural or artificial, and any port, haven or estuary, or entrusted with the duty of conserving, maintaining or improving the navigation of any tidal water: s 108. See generally PORTS AND HARBOURS vol 36(1) (2007 Reissue) PARAS 619-621.

UPDATE

901-923 The Legislation and the Administration

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

921 Local authorities

TEXT AND NOTES 1, 2--1963 Act s 50(1) now Explosives Act 1875 s 67(1A) (added by SI 2005/1082). 1963 Act s 50(1), (3) repealed: SI 2005/1082.

NOTE 3--SI 1979/72 further amended: SI 2005/1082.

TEXT AND NOTE 4--Reference to fire authority now to fire and rescue authority: 1875 Act s 67(3A) (amended by Fire and Rescue Services Act 2004 Sch 1 para 1).

TEXT AND NOTES 5, 6--Repealed: SI 2005/1082.

Halsbury's Laws of England/EXPLOSIVES (VOLUME 17(2) (REISSUE))/1. THE LEGISLATION AND THE ADMINISTRATION/(2) THE ADMINISTRATION/(ii) Local Administration/922. Duty of local authorities.

922. Duty of local authorities.

Local authorities¹ are obliged to carry into effect within their jurisdiction the powers vested in them under the Explosives Act 1875 relating to the manufacture, keeping, sale, conveyance and importation of explosives². Those powers are additional to and not in derogation of any powers conferred by any other Act³.

1 For the meaning of 'local authority' for this purpose see PARA 921 ante.

2 Explosives Act 1875 s 69 (amended by the Explosives Acts 1875 and 1923 etc (Repeals and Modifications) Regulations 1974, SI 1974/1885, regs 2(a), 9, Sch 1).

3 Explosives Act 1875 s 103 (amended by the Explosives Acts 1875 and 1923 etc (Repeals and Modifications) Regulations 1974, SI 1974/1885, regs 2(a), 9, Sch 2 para 23). On the application of the Health and Safety Commission or of any local authority or of any person making, keeping, importing, exporting or selling any explosive within the jurisdiction of any local authority, the Secretary of State may, after notice to the commission or to such authority, make an order repealing, altering or amending all or any provision of any Act, charter or custom relating to an explosive: Explosives Act 1875 s 103 (as so amended).

UPDATE

901-923 The Legislation and the Administration

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

922 Duty of local authorities

TEXT AND NOTES--Repealed: SI 2005/1082.

Halsbury's Laws of England/EXPLOSIVES (VOLUME 17(2) (REISSUE))/1. THE LEGISLATION AND THE ADMINISTRATION/(2) THE ADMINISTRATION/(ii) Local Administration/923. Expenses and notices.

923. Expenses and notices.

All expenses incurred by any local authority in carrying into effect the execution of the Explosives Act 1875, including the salary and expenses of any officer directed by the local authority to act under the Act, are to be paid out of the local rate¹.

Local authorities are entitled to charge certain fees for licences, certificates, and other matters. Fees are payable in respect of stores and registered premises². Notices and documents required or authorised to be served on or given to a local authority may be served or given by delivering them to the local authority or by leaving them at, or sending them to, the local authority's proper address³.

¹ Explosives Act 1875 s 70. Sums received as charges for the use of magazines of certain local authorities must be applied in aid of the local rate: see PARA 949 note 4 post. For the purposes of the Act, 'local rate' means, in a harbour, any money, fund or rate applicable or leviable by the harbour authority for any harbour purposes: s 70 (this part of s 70 amended by the London Government Act 1963 s 93(1), Sch 18, Pt II; Local Government Act 1972 s 272(1), Sch 30). As to rates generally, and the replacement of domestic rates with the council tax, see RATING AND COUNCIL TAX vol 39(1B) (Reissue) PARA 2 et seq. As to the rate fund see LOCAL GOVERNMENT vol 29(1) (Reissue) PARA 545.

² See the Explosives Act 1875 ss 15, 18, 21 (all as amended); and PARAS 954, 955, 962 post. These sections provide that the maximum fee payable must not exceed that from time to time fixed or determined under regulations made in accordance with the Health and Safety at Work etc Act 1974 s 43(2).

³ Health and Safety at Work etc Act 1974 s 46(2), (8). See further PARA 919 ante.

UPDATE

901-923 The Legislation and the Administration

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

923 Expenses and notices

TEXT AND NOTES 1, 2--Repealed: SI 2005/1082.

Halsbury's Laws of England/EXPLOSIVES (VOLUME 17(2) (REISSUE))/2. MANUFACTURE AND KEEPING OF EXPLOSIVES/(1) FACTORIES AND MAGAZINES/(i) Need for a Licence; Exemptions/924. Licence for new factory or magazine.

2. MANUFACTURE AND KEEPING OF EXPLOSIVES

(1) FACTORIES AND MAGAZINES

(i) Need for a Licence; Exemptions

924. Licence for new factory or magazine.

A new factory or magazine¹ for explosives² may not be established except on the site and in the manner specified in a licence for the same granted under the Explosives Act 1875³. All buildings and places adjoining each other and occupied together are deemed to be one factory or magazine and must accordingly be included in one licence⁴.

In addition to the licence, planning permission is required for the opening of a new factory or magazine⁵. Further, subject to certain exceptions⁶, the presence of a hazardous substance⁷ on, over or under land⁸ requires⁹ 'hazardous substances consent'¹⁰ to be given by the appropriate hazardous substances authority¹¹.

¹ For the meaning of 'magazine' see PARA 909 note 1 ante. 'Factory' is not defined in the Explosives Act 1875.

² For the meaning of 'explosive' see PARA 905 ante.

³ Explosives Act 1875 ss 6. See also s 39. For the procedure on application for such a licence see PARA 933 post.

⁴ Ibid s 27.

⁵ See generally the Town and Country Planning Act 1990. However, there are certain exceptions: see the Town and Country Planning (Use Classes) Order 1987, SI 1987/764, art 3 (as amended), Schedule (as amended). See also TOWN AND COUNTRY PLANNING vol 46(1) (Reissue) PARAS 224 et seq, 287.

⁶ See TOWN AND COUNTRY PLANNING vol 46(3) (Reissue) PARA 1235.

⁷ As to the Secretary of State's power to prescribe hazardous substances and as to the substances so provided see TOWN AND COUNTRY PLANNING vol 46(3) (Reissue) PARA 1230. For the meaning of 'prescribed' see TOWN AND COUNTRY PLANNING vol 46(3) (Reissue) PARA 1292. As to the Secretary of State see PARA 913 ante.

⁸ For these purposes, 'land' has the same meaning as in the Town and Country Planning Act 1990 (see TOWN AND COUNTRY PLANNING vol 46(1) (Reissue) PARA 2): Planning (Hazardous Substances) Act 1990 s 39(1), (2).

⁹ Ie subject to the provisions of the Planning (Hazardous Substances) Act 1990.

¹⁰ 'Hazardous substances consent' means consent required by ibid s 4: s 39(1).

¹¹ See TOWN AND COUNTRY PLANNING vol 46(3) (Reissue) PARA 1234 et seq.

UPDATE

924-970 Manufacture and Keeping of Explosives

The provisions of the Explosives Act 1875 and subordinate legislation relating to the manufacture and storage of explosives are largely replaced by the Manufacture and Storage of Explosives Regulations 2005, SI 2005/1082: see PARAS 924A-924E.

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

Halsbury's Laws of England/EXPLOSIVES (VOLUME 17(2) (REISSUE))/2. MANUFACTURE AND KEEPING OF EXPLOSIVES/(1) FACTORIES AND MAGAZINES/(i) Need for a Licence; Exemptions/924A. Application of the Manufacture and Storage of Explosives Regulations 2005.

924A. Application of the Manufacture and Storage of Explosives Regulations 2005.

Legislation concerning the licensing the manufacture¹ and storage of explosives² and for registration in respect of the storage of explosives³ extends to Great Britain⁴ and, to a specified extent⁵, outside Great Britain⁶. To the extent that the legislation concerns the importation of pyrotechnics⁷ into the United Kingdom, it also extends to Northern Ireland⁸.

Certain provisions⁹ do not apply to (1) activities to which other specified legislation applies¹⁰; (2) the master or crew of a ship¹¹; (3) the transport of explosives by air¹²; (4) offshore installations¹³; and (5) mines¹⁴. Various other provisions do not apply in relation to specified persons¹⁵, bodies¹⁶ and purposes¹⁷.

1 'Manufacture' includes (1) in relation to explosive articles, their repair, modification, disassembly or unmaking; (2) in relation to explosive substances, their reprocessing, modification or adaptation, but it does not include the packing, unpacking, re-packing, labelling or testing of explosives or the division of an amount of explosives stored in bulk into smaller amounts and the placing of those smaller amounts into containers: Manufacture and Storage of Explosives Regulations 2005, SI 2005/1082, reg 2(1). For the meaning of 'explosive', 'explosive article' and 'explosive substance' see NOTE 2.

2 'Explosive' means (1) any explosive article or explosive substance which would (a) if packaged for transport, be classified in accordance with the United Nations Recommendations as falling within Class 1; or (b) be classified in accordance with the United Nations Recommendations as (i) being unduly sensitive or so reactive as to be subject to spontaneous reaction and accordingly too dangerous to transport, and (ii) falling within Class 1; or (2) a desensitised explosive, but it does not include an explosive substance produced as part of a manufacturing process which thereafter reprocesses it in order to produce a substance or preparation which is not an explosive substance: SI 2005/1082, reg 2(1).

'Explosive article' means an article containing one or more explosive substances, and 'explosive substance' means a substance or preparation, not including a substance or preparation in a solely gaseous form or in the form of vapour, which is (A) capable by chemical reaction in itself of producing gas at such a temperature and pressure and at such a speed as could cause damage to surroundings; or (B) designed to produce an effect by heat, light, sound, gas or smoke, or a combination of these as a result of a non-detonative, self-sustaining, exothermic chemical reaction: reg 2(1). 'United Nations Recommendations' means the United Nations Recommendations on the Transport of Dangerous Goods (based on those originally prepared by the United Nations Committee of Experts on the Transport of Dangerous Goods considered by the Economic and Social Committee of Experts at its twenty-third session (Resolution 645G (XXIII) of 26 April 1957)) as revised or reissued from time to time: SI 2005/1082 reg 2(1). 'Class 1' means Class 1 in respect of explosives or the classification of dangerous goods as set out in the United Nations Recommendations: SI 2005/1082 reg 2(1). 'Desensitised explosive' means (aa) a solid explosive substance which has been wetted with water or alcohol or diluted with one or more other substances; or (bb) a liquid explosive substance which has been dissolved or suspended in water or one or more other substances, to form a homogeneous mixture so as to suppress its explosive properties and which, without that treatment, would be classified in accordance with the United Nations Recommendations as falling within Class 1: SI 2005/1082 reg 2(1). 'Substance' means any natural or artificial substance whether in solid or liquid form or in the form of a gas or vapour, and 'preparation' means a mixture of two or more substances or a solution of any substance or substances: reg 2(1).

3 Ie SI 2005/1082. 'Registration' means registration under reg 11 and includes a varied registration (see PARA 924C.3): reg 2(1) (definition amended by SI 2007/2598, SI 2009/693).

4 SI 2005/1082 reg 3(1)(a).

5 Ie as the Health and Safety at Work etc Act 1974 ss 1-59 and 80-82 apply by virtue of the Health and Safety at Work etc Act 1974 (Application outside Great Britain) Order 2001, SI 2001/2127 (see HEALTH AND SAFETY AT WORK vol 52 (2009) PARA 305): SI 2005/1082 art 3(1)(a).

6 Ibid reg 3(1)(b).

- 7 'Pyrotechnic' means an explosive article or substance of a kind designed to produce an effect by heat, light, sound, gas or smoke, or a combination of any of these, as a result of non-detonative, self-sustaining, exothermic chemical reactions: *ibid* reg 2(1). As to information regarding the net mass of pyrotechnic articles, see reg 25A (added by SI 2009/693).
- 8 SI 2005/1082 reg 3(1), (8).
- 9 *Ie* *ibid* reg 4-25.
- 10 *Ie* the Dangerous Substances in Harbour Areas Regulations 1987, SI 1987/37, Pt IX (regs 33-42) (see PORTS AND HARBOURS vol 36(1) (2007 Reissue) PARA 708) and the Carriage of Dangerous Goods and Use of Transportable Pressure Equipment Regulations 2007, SI 2007/1573 (apart from any activity which is to be treated as storage by virtue of SI 2005/1082 reg 2(6)) (see HEALTH AND SAFETY AT WORK vol 53 (2009) PARA 555 et seq): reg 3(2)(a), (b) (reg 3(2)(b) amended by SI 2007/1573).
- 11 See SI 2005/1082 reg 3(2)(c). 'Ship' includes every description of vessel used in navigation: reg 2(1).
- 12 See *ibid* reg 3(2)(d).
- 13 *Ie* within the meaning of the Offshore Installations and Pipeline Works (Management and Administration) Regulations 1995, SI 1995/738, reg 3: SI 2005/1082 reg 3(2)(e).
- 14 See *ibid* reg 3(2)(f) (amended by SI 2009/693). 'Mine' means an excavation or system of excavations, including all such excavations to which a common system of ventilation is provided, made for the purpose of, or in connection with, the getting, wholly or substantially by means involving the employment of persons below ground, of minerals (whether in their natural state or in solution or suspension) or products of minerals: SI 2005/1082 reg 2(1).
- 15 *Ibid* reg 8 and 10 do not apply to a constable in the execution of his duties, an inspector appointed under the Health and Safety at Work etc Act 1974 s 19 in the performance of his functions, or a customs officer in the performance of his functions; SI 2005/1082 reg 10 does not apply to the Commissioners of Customs and Excise, or civilian employees of a police force duly authorised in writing by the chief officer of police to store explosives: reg 3(3), (4)(c), (e). 'Police force' for the purposes of regs 3(4)(d), (6)(b) and 5(3)(d) includes (1) the police force known as the British Transport Police force; (2) the special constables appointed as special constables under the Special Constables Act 1923 s 3 on the nomination of the United Kingdom Atomic Energy Authority; and (3) the constabulary to be known as the Civil Nuclear Constabulary by virtue of the Energy Act 2004 s 52(1) (see POLICE vol 36(1) (2007 Reissue) PARA 128): SI 2005/1082 reg 2(1).
- 16 *Ibid* reg 10 does not apply to the Health and Safety Executive, a local authority, or a police force: reg 3(4) (a), (b), (d). As to the Health and Safety Executive see HEALTH AND SAFETY AT WORK vol 52 (2009) PARAS 361-371. 'Local authority' means in relation to (1) the City of London, the Common Council for the City of London; (2) an area in the rest of London, the London Borough Council for that area; (3) an area where there is a metropolitan county fire and rescue authority, that authority; (4) the Isles of Scilly, the Council of the Isles of Scilly; (5) an area in the rest of England, the county council for that area or where there is no county council for that area, the district council for that area; (6) an area in Scotland, the council for the local government area; and (7) an area in Wales, the county council or the county borough council for that area: reg 2(1) (definition amended by SI 2007/2598).
- 17 Where certain conditions are met, *ibid* regs 5, 9-21 do not apply to the manufacture or storage of explosives, at any site under the control of the Secretary of State for Defence, or held for the purposes of a visiting force or headquarters: see reg 3(5). Regulations 5-21 and 24 do not apply to explosives (1) seized by a constable in the execution of his duties; (2) received by a police force from a member of the public; or (3) which, for reasons of public safety or protection of property, are undergoing ordnance disposal: see reg 3(6). In relation to the application of SI 2005/1082 to ammonium nitrate blasting intermediate by virtue of reg 2(2), reg 10 and 11 do not apply to the storage of ammonium nitrate blasting intermediate: reg 3(7). 'Ammonium nitrate blasting intermediate' means non-sensitised mixtures of, primarily, ammonium nitrate and other substances which are not themselves explosive, such as oxidisers and fuels, intended to produce a blasting explosive only after further processing prior to use and classified in accordance with the United Nations Recommendations as falling within Class 5.1; 'quarry' has the meaning assigned to it by the Quarries Regulations 1999, SI 1999/2024, reg 3; 'cap-sensitive' means an explosive which gives a positive result when tested in accordance with the Series 5(a) test of the Manual of Tests and Criteria, third edition supporting the United Nations Recommendations; and 'non-sensitised' means giving a negative test result when subjected to Test Series 8 of the Manual of Tests and Criteria, third edition, supporting the United Nations Recommendations: SI 2005/1082 regs 2(1), 9(3)(b).

UPDATE

924-970 Manufacture and Keeping of Explosives

The provisions of the Explosives Act 1875 and subordinate legislation relating to the manufacture and storage of explosives are largely replaced by the Manufacture and Storage of Explosives Regulations 2005, SI 2005/1082: see PARAS 924A-924E.

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

Halsbury's Laws of England/EXPLOSIVES (VOLUME 17(2) (REISSUE))/2. MANUFACTURE AND KEEPING OF EXPLOSIVES/(1) FACTORIES AND MAGAZINES/(i) Need for a Licence; Exemptions/924B. Safety requirements.

924B. Safety requirements.

Any person who manufactures or stores explosives¹ must take appropriate measures (1) to prevent fire or explosion²; (2) to limit the extent of fire or explosion including measures to prevent the spreading of fires and the communication of explosions from one location to another; and (3) to protect persons from the effects of fire or explosion³.

Every person who stores explosives at a site must ensure that the relevant separation distance⁴ is maintained between a store⁵ and a building or other place not within that site⁶. However, this requirement does not apply to (a) desensitised explosives or explosives which are stored under a licence granted by the Health and Safety Executive⁷ in cases where the assent of the local authority was required⁸, or (b) the storage of explosives where the total quantity of explosives stored at a site does not exceed a specified amount⁹, and the explosives are stored in a safe and suitable place with all due precautions for public safety¹⁰. Every person under such a duty must ensure that the separation distance¹¹ is maintained between a store and any building on the site in which the store is situated which is used either for accommodation or for work, but not including any building used for work which is normally unoccupied by any person and is not a store¹².

Every person who is granted a licence¹³ to manufacture or store explosives must ensure that the local planning authority¹⁴ in whose area the manufacture or storage takes place is, within 28 days of the licence being granted or varied in a way which affects the separation distances required to be maintained, given a plan of the site and its immediate surrounding area showing the separation distances required to be maintained pursuant to the licence or varied licence¹⁵.

Any person who disposes¹⁶ of explosives must ensure, so far as is reasonably practicable, that they are disposed of safely¹⁷. Any person who decontaminates explosive-contaminated items must ensure, so far as is reasonably practicable, that they are decontaminated safely¹⁸. No person who manufactures or stores explosives may permit a person under 18 years to work in that manufacture or storage except under appropriate supervision¹⁹.

No person may, without the permission of the occupier, enter²⁰ (i) any store in or at a site; (ii) any building used for the manufacture of explosives in or at a site; or (iii) any site with clearly marked boundaries at which explosives are stored or manufactured, operating under a licence or registration²¹. If a person has so entered, he must not refuse to leave that site when requested to do so by a constable or the occupier, his employee or agent²².

1 The reference to the manufacture or storage of explosives is deemed to include a reference to any handling, on-site transport and testing of explosives which is associated with that manufacture or storage: Manufacture and Storage of Explosives Regulations 2005, SI 2005/1082, reg 4(2).

2 'Fire or explosion' means unplanned fire or explosion at the site of manufacture or storage: *ibid* reg 4(3). 'Site' means the whole area under the control of the same person and, for these purposes (1) all places adjoining each other under the control of the same person is to be treated as a whole area; and (2) two or more areas under the control of the same person separated only by a road, railway or inland waterway is to be treated as a whole area: reg 2(1). 'Storage', in relation to explosives means their possession for any period after their manufacture, save for any period during which they are being prepared at any place for use at that place; and any period during which they are being transported beyond the place where they are stored: see reg 2(5)-(7).

3 *Ibid* reg 4(1).

- 4 le separation distance prescribed by ibid Sch 2. 'Separation distance' means the distance between the store or the building in which explosives are, or are to be, manufactured and a building, or other place in or at which people are or are likely to be present either all the time or from time to time: reg 2(1).
- 5 'A store' means a building, enclosed area or metal structure in which explosives are, or are to be, stored: ibid reg 2(1).
- 6 Ibid reg 5(1).
- 7 As to the Health and Safety Executive see HEALTH AND SAFETY AT WORK vol 52 (2009) PARAS 361-371.
- 8 le pursuant to SI 2005/1082 reg 13(3).
- 9 le (1) 100 grams; (2) 30 kg of shooters' powder and 300 grams of percussion caps (excluding any amount of small arms ammunition); (3) 200 detonators and (a) 5 kg of water-based explosive and detonating cord, or (b) 5 kg of water-based explosive or detonating cord; or (4) in the case of explosives kept by a police force (a) 4 kg of explosive kept for the purpose of training dogs used for the detection of explosives; and (b) 30 kg of explosives kept for the purposes of ordnance disposal: ibid reg 5(3)(a)-(d) (as amended: see NOTE 10). 'Shooters' powder' means black powder, smokeless powder, or any other substance or preparation based on potassium nitrate or nitro cellulose, whether in powder, pelletised or granular form, used, or to be used, as a propellant; 'black powder' means an intimate mixture, with or without sulphur, of charcoal or other carbon with potassium nitrate or sodium nitrate, whether the mixture is in meal, granular, compressed or pelletised form, being an explosive substance allocated in accordance with the United Nations Recommendations the UN nos 0027 or 0028; 'smokeless powder' means an explosive substance allocated in accordance with the United Nations Recommendations the UN nos 0160 or 0161; 'percussion caps' means items intended for use in small arms ammunition allocated in accordance with the United Nations Recommendations the UN nos 0044, 0377 or 0378; and 'small arms ammunition' means the explosive articles allocated in accordance with the United Nations Recommendations the UN nos 0012, 0014 or 0055 which are intended exclusively for use in small arms: SI 2005/1082 reg 2(1). For the meaning of 'police force' see PARA 924A NOTE 15.
- 10 Ibid reg 5(3) (amended by SI 2009/693).
- 11 le the distance which is equal to half the relevant separation distance determined in accordance with SI 2005/1082 Sch 2: reg 5(5).
- 12 Ibid reg 5(4).
- 13 le in a case to which ibid reg 13(3) applies.
- 14 'Local planning authority' in relation to an area in England and Wales has the same meaning as it has in the Town and Country Planning Act 1990 Pt I (ss 1-9) (see TOWN AND COUNTRY PLANNING vol 46(1) (Reissue) PARA 28 et seq) save that, where there is more than one local planning authority, it means the district planning authority for the district: SI 2005/1082 reg 5(7).
- 15 Ibid reg 5(6) (amended by SI 2009/693).
- 16 'Disposes', in relation to explosives and explosive-contaminated items, means destroying the explosives or explosive-contaminated items or otherwise rendering them harmless: SI 2005/1082 reg 2(1).
- 17 Ibid reg 6(1).
- 18 Ibid reg 6(2).
- 19 Ibid reg 7 (amended by SI 2009/693).
- 20 'Enter' includes entering onto a roof of a store or a building in which explosives are manufactured: SI 2005/1082 reg 8(3).
- 21 Ibid reg 8(1)(a).
- 22 Ibid reg 8(1)(b). Where following such a request to leave the person who has entered that place without permission refuses to leave that site, a constable or the occupier, his employee or agent may remove that person from the site using reasonable force, if necessary: reg 8(2).

UPDATE

924-970 Manufacture and Keeping of Explosives

The provisions of the Explosives Act 1875 and subordinate legislation relating to the manufacture and storage of explosives are largely replaced by the Manufacture and Storage of Explosives Regulations 2005, SI 2005/1082: see PARAS 924A-924E.

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

Halsbury's Laws of England/EXPLOSIVES (VOLUME 17(2) (REISSUE))/2. MANUFACTURE AND KEEPING OF EXPLOSIVES/(1) FACTORIES AND MAGAZINES/(i) Need for a Licence; Exemptions/924C. Licensing and registration requirements.

924C. Licensing and registration requirements.

1. Manufacture of explosives

No person may manufacture explosives unless he holds a licence for that manufacture and complies with the conditions of that licence¹. However, such a licence is not required for the following:

- 6 (1) the manufacture of explosives for the purpose of laboratory analysis, testing, demonstration or experimentation, but not for practical use or sale, where the total quantity of explosives being manufactured at any time does not exceed 100 grams²;
- 7 (2) the making or unmaking of small arms ammunition, or the preparation of cartridges for use with firearms which are to be used at historical re-enactment events, where the total quantity of primer and propellant used at any one time does not exceed 2 kg³;
- 8 (3) the preparation of shot firing charges in connection with their use⁴;
- 9 (4) the preparation, assembly, disassembly and fusing of firework displays at the place of intended use⁵;
- 10 (5) the preparation, assembly and fusing of fireworks, in quantities of no more than 10 kg at a time, at a site in relation to which a person holds a licence or registration for the storage of explosives, for the purposes of a firework display to be put on by that person⁶;
- 11 (6) the preparation, assembly and fusing of explosives commissioned for use in theatrical, television or cinematic special effects⁷;
- 12 (7) the reprocessing of an explosive to form a pharmaceutical product which is not in itself an explosive⁸;
- 13 (8) the mixing for immediate use of ammonium nitrate with fuel oil, or ammonium nitrate blasting intermediate with another substance, at a mine or quarry, to produce an explosive which is not cap-sensitive⁹;
- 14 (9) the use of desensitised explosives in the manufacture of products which are not in themselves explosives¹⁰;
- 15 (10) the manufacture of explosives by a company which is a wholly-owned subsidiary of another company at a site in relation to which that other company holds a licence to manufacture explosives and that manufacture by the wholly-owned subsidiary is in accordance with the conditions of that licence¹¹.

In proceedings against a person for a contravention of the prohibition of the manufacture of explosives without a licence which involves using a building or part of a building licensed for the manufacture of explosives, for another manufacturing process not specified in the licence, it is a defence for that person to prove that (a) that use was temporary¹²; (b) that other process of manufacture involved explosive of the same, or a lower, hazard type than the explosives which the conditions of the licence permit in, as the case may be, that building or part of a building¹³; (c) the maximum quantity of explosives in that building or part of a building at any one time permitted under the conditions of the licence was not exceeded¹⁴; and (d) he informed the Health and Safety Executive as soon as was reasonably practicable after the start of that use¹⁵.

- 1 Manufacture and Storage of Explosives Regulations 2005, SI 2005/1082, reg 9(1).
- 2 See *ibid* reg 9(2)(a) (amended by SI 2007/2598).
- 3 See SI 2005/1082 reg 9(2)(b). 'Firearm' has the same meaning as it is given in the Firearms Act 1968 s 57(1) (see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(2) (2006 Reissue) PARA 630); and 'propellant' means a deflagrating explosive used as a propellant in firearms: SI 2005/1082 reg 2(1).
- 4 See *ibid* reg 9(2)(c). 'Shot firing charges' means charges used in shot firing operations: reg 9(3)(a).
- 5 See *ibid* reg 9(2)(d).
- 6 See *ibid* reg 9(2)(e). 'Fireworks' means the explosive articles allocated in accordance with the United Nations Recommendations any of the UN nos 0333-0337; and 'registration' means registration under SI 2005/1082 reg 11: reg 2(1).
- 7 See *ibid* reg 9(2)(f).
- 8 See *ibid* reg 9(2)(g).
- 9 See *ibid* reg 9(2)(h). 'Quarry' has the meaning assigned to it by the Quarries Regulations 1999, SI 1999/2024, reg 3; and 'cap-sensitive' means an explosive which gives a positive result when tested in accordance with the Series 5(a) test of the Manual of Tests and Criteria, third edition supporting the United Nations Recommendations: SI 2005/1082 regs 2(1), 9(3)(b).
- 10 See *ibid* reg 9(2)(i).
- 11 See *ibid* reg 9(2)(j) (amended by SI 2009/693). 'Wholly-owned subsidiary' has the same meaning as it is given by the Companies Act 1985 s 738(2) (see COMPANIES vol 15 (2009) PARA 1091): SI 2005/1082 reg 2(2).
- 12 See *ibid* reg 23(1)(a).
- 13 See *ibid* reg 23(1)(b). For the meaning of 'hazard type' see PARA 924C.2 NOTE 6.
- 14 See *ibid* reg 23(1)(c).
- 15 See *ibid* reg 23(1)(d).

2. Storage of explosives

No person may store explosives unless he holds a licence for their storage and complies with the conditions of that licence¹. However, such a licence is not required for the following²:

- 16 (1) the storage of explosives by a registered person³;
- 17 (2) the storage of one or more of the following (a) no more than 10 kg of black powder; (b) no more than 5 kg of shooters' powder, any specified explosive⁴ or combination of those specified explosives, or a combination of shooters' powder and any one or more of those specified explosives; (c) no more than 15 kg of percussion caps or small arms ammunition or a mixture of them⁵;
- 18 (3) the storage of no more than 7 kg of (a) hazard type 1 or 2 explosives, or (b) a combination of hazard type 1 or 2 explosives with explosives of another hazard type, for no longer than 24 hours⁶;
- 19 (4) the storage of hazard type 3 or 4 explosives for no longer than 24 hours⁷;
- 20 (5) the storage of no more than 100 kg of (a) hazard type 3 explosives consisting of fireworks; (b) shooters' powders; or (c) a combination of shooters' powders and hazard type 3 and 4 explosives consisting of fireworks, provided that the explosives are stored for no longer than three consecutive days in their place of intended use⁸;
- 21 (6) the storage of (a) no more than 250 kg of hazard type 4 explosives provided that the explosives are stored for no more than consecutive three days in their place of intended use; or (b) no more than 50 kg of hazard type 4 explosives

- consisting solely of fireworks provided that the fireworks are stored for no longer than 21 consecutive days and are not for sale or for use at work⁹;
- 22 (7) the storage of desensitised explosives¹⁰;
- 23 (8) the storage of explosives by a company which is a wholly-owned subsidiary of another company at a site in relation to which that other company holds a registration or a licence to store explosives and that storage by the wholly-owned subsidiary is in accordance with any term of that registration or condition of that licence¹¹.

No more than one of the exceptions listed in heads (1) to (6) above may be relied on in relation to explosives stored at the same site at the same time, irrespective of the person who is storing them¹².

In proceedings against a person for a contravention of the prohibition of storage of explosives without a licence or breach of a condition of a licence it is a defence for that person to prove that the storage of explosives without a licence or in breach of a condition of a licence was caused by an emergency being an emergency which that person took all reasonable precautions and exercised all due diligence to avoid¹³. Where it is alleged against that person that the storage concerned was for a period longer than the permitted period¹⁴, it is for that person to prove that the storage concerned was for no longer than the permitted period¹⁵.

1 Manufacture and Storage of Explosives Regulations 2005, SI 2005/1082, reg 10(1).

2 The quantities referred to in heads (1)-(8) are the maximum quantities of the explosives they respectively relate to which may be present at a site at any one time: *ibid* reg 10(3)(b).

3 *le* registered in accordance with *ibid* reg 11 (see PARA 924C.3): reg 10(2)(a). 'Registered' in relation to a person, means a person registered in respect of the storage of explosives under reg 11 (see PARA 924C.3) and includes a person treated under reg 21 (see PARA 924C.9) as being registered: reg 2(1).

4 *le* any explosive listed in the Control of Explosives Regulations 1991, SI 1991/1531, Sch 1 (amended by SI 2009/693).

5 SI 2005/1082 reg 10(2)(b).

6 *Ibid* reg 10(2)(c). 'Hazard type' means any of hazard type 1 explosive, hazard type 2 explosive, hazard type 3 explosive (see NOTE 7) or hazard type 4 explosive (see NOTE 7); 'hazard type 1 explosive' means an explosive which, as a result of, or as a result of any effect of, the conditions of its storage or process of manufacture, has a mass explosion hazard; and 'hazard type 2 explosive' means an explosive which, as a result of, or as a result of any effect of, the conditions of its storage or process of manufacture, has a serious projectile hazard but does not have a mass explosion hazard: reg 2(1).

7 *Ibid* reg 10(2)(d). 'Hazard type 3 explosive' means an explosive which, as a result of, or as a result of any effect of, the conditions of its storage or process of manufacture, has a fire hazard and either a minor blast hazard or a minor projectile hazard, or both, but does not have a mass explosion hazard; and 'hazard type 4 explosive' means an explosive which, as a result of, or as a result of any effect of, the conditions of its storage or process of manufacture, has a fire hazard or slight explosion hazard, or both, with only local effect: reg 2(1).

8 *Ibid* reg 10(2)(e) (amended by SI 2009/693).

9 SI 2005/1082 reg 10(2)(f) (amended by SI 2009/693).

10 *le* desensitised explosives which have been allocated in accordance with the United Nations Recommendations the UN nos 2059, 2555, 2556, 2557, 1336 or 1337: SI 2005/1082 reg 10(2)(g).

11 *Ibid* reg 10(2)(h) (amended by SI 2009/693).

12 SI 2005/1082 reg 10(3)(a).

13 See *ibid* reg 23(2).

14 *le* the period referred to in *ibid* reg 10(2)(c), (d), (e) or (f)(i) or (ii).

15 See *ibid* reg 23(3).

3. Registration in relation to storage of explosives

A person who wishes to store within one site at any one time no more than (1) 30 kg of explosives of any hazard type¹; (2) 100 kg of hazard type 3 explosives²; (3) 100 kg of a combination of hazard type 3 explosives with explosives of hazard type 4³; (4) 250 kg of hazard type 4 explosives⁴; or (5) 250 kg of small arms ammunition and percussion caps and 30 kg of shooters' powder⁵, may apply to the licensing authority in whose area the storage will take place to be registered in respect of that storage⁶. However, no more than one of heads (1) to (5) above apply to explosives stored at the same site at the same time, irrespective of the person who is storing them⁷.

An application for a licence or registration must be made to the licensing authority on a form approved for the time being by the Health and Safety Executive⁸. The licensing authority must register the applicant unless any of the grounds for refusing to do so apply⁹. Where a licensing authority registers an applicant, it must issue the applicant with a certificate of registration, in a form approved for the time being by the Executive¹⁰. Generally, a registration remains in force for such period not exceeding two years as the licensing authority determines¹¹, and a renewal of a registration¹² may be granted for any period not exceeding one year¹³.

1 Manufacture and Storage of Explosives Regulations 2005, SI 2005/1082, reg 11(1)(a).

2 *Ibid* reg 11(1)(b).

3 *Ibid* reg 11(1)(c).

4 *Ibid* reg 11(1)(d).

5 *Ibid* reg 11(1)(e).

6 *Ibid* reg 11(1). As to the meaning of 'licensing authority' see Sch 1 (amended by SI 2009/693).

7 SI 2005/1082 reg 11(5) (amended by SI 2009/693).

8 SI 2005/1082 reg 12.

9 *Ibid* reg 11(2). As to the grounds for refusing to do so see PARA 924C.5.

10 *Ibid* reg 11(3).

11 See *ibid* reg 11(4), (4A) (reg 11(4) substituted, reg 11(4A) added by SI 2009/693).

12 'Renewal of a registration' means respectively the granting of a registration to follow a previous registration without any amendment or gap in time: SI 2005/1082 reg 2(1).

13 See *ibid* reg 11(9), (9A) (reg 11(9) substituted, reg 11(9A) added by SI 2009/693). For further provisions in relation to registrations relating to storage, see SI 2005/1082 reg 11(6)-(8), Sch 3 (reg 11(7), (8) amended by SI 2009/693).

4. Grant of licences

A licence, not being a renewal of a licence¹, may be granted where the licensing authority is a local authority, for such a period not exceeding two years as the licensing authority determines². Such a licence may also be granted where the licensing authority is a chief officer of the police or the Health and Safety Executive, for such period not exceeding five years as that licensing authority determines³. However, where the applicant for the licence has been granted an explosives certificate⁴, a licence may be granted for any period not exceeding the due expiry date of that explosives certificate. In specified cases⁵, and where the licence

application relates only to the manufacture of ammonium nitrate blasting intermediate, a licence may be granted for any period or without a time limit⁶.

Except in the specified cases referred to above, the licensing authority must grant a licence unless any of the grounds for refusing to do so apply⁷. Every licence must include conditions which specify the site and, within it, the places where the explosives may be manufactured or stored, and the hazard type and maximum amount of explosive which may be manufactured, stored or otherwise present, as the case may be, at any one time at or in any place so specified⁸. A renewal of a licence may be granted for various periods⁹.

1 'Renewal of a licence' means respectively the granting of a licence to follow a previous licence without any amendment or gap in time: Manufacture and Storage of Explosives Regulations 2005, SI 2005/1082, reg 2(1).

2 Ibid reg 13(1)(a) (reg 13(1) substituted by SI 2009/693). A licence granted pursuant to SI 2005/1082 reg 13 must be in a form approved for the time being for the purposes of this regulation by the Health and Safety Executive: reg 13(8).

3 Ibid reg 13(1)(b) (as substituted).

4 'Explosives certificate' has the same meaning as in the Control of Explosives Regulations 1991, SI 1991/1531 (see PARA 967): SI 2005/1082 reg 2(1).

5 In cases where the Executive is the licensing authority: see ibid reg 13(3). In such a case the Executive must refuse to grant a licence unless the local authority, or each local authority, as the case may be, has so assented: reg 13(3). As to the procedure for obtaining the assent of the relevant local authority or relevant local authorities, see reg 14. Cases to which reg 13(3) does not apply are set out in reg 13(4) (reg 13(4) amended by SI 2009/693).

6 SI 2005/1082 reg 13(1)(c) (as substituted).

7 Ibid reg 13(2). As to the grounds for refusing to do so see PARA 924C.5.

8 Ibid reg 13(5) (amended by SI 2009/693). See also SI 2005/1082 reg 13(6), (7) (reg 13(6) amended by SI 2009/693).

9 SI 2005/1082 reg 13(9) (substituted by SI 2009/693).

5. Refusals of licences, registration and draft licences

Where the licensing authority is of the opinion that (1) the proposed site or, within it, any place where the manufacture or storage of explosives is proposed to take place is unsuitable for that manufacture or storage¹; or (2) the applicant is not a fit person to store explosives, in the case of an application for registration or a licence to store explosives, or to manufacture explosives, in the case of an application for a licence to do so², it must refuse an application for a licence or registration³ and, where relevant⁴, must refuse to issue the draft licence⁵. Such a refusal to issue the draft licence is to be treated as a refusal of an application for a licence⁶.

However, where a licensing authority proposes to refuse an application for a licence or registration, or a renewal or transfer of a licence or registration, it must, before taking any such action, notify the applicant of its proposed course of action and afford him the opportunity of making representations to the licensing authority about it, within a period of 28 days from the date of the notification⁷.

A person may appeal to the Secretary of State against a decision of a licensing authority to refuse to register him to renew his registration or to transfer to him a registration held by another⁸.

1 Manufacture and Storage of Explosives Regulations 2005, SI 2005/1082, reg 15(2)(a).

2 Ibid reg 15(2)(b).

3 Ibid reg 15(1)(a).

4 Ie where ibid reg 14(1) applies.

5 Ibid reg 15(1)(b).

6 Ie, for the purposes of SI 2005/1082: reg 15(3). The provisions of reg 18 apply to a refusal to issue a draft licence: see reg 15(3).

7 Ibid reg 18(1)(a) (amended by SI 2009/693). Such representations may be made in writing, or both in writing and orally: SI 2005/1082 reg 18(2). Where the licensing authority decides to refuse an application for a licence or registration, or for a renewal or transfer of a licence or registration, it must provide in writing to the applicant the reasons for its decision: reg 18(3) (amended by SI 2009/693).

8 SI 2005/1082 reg 19(a) (reg 19 substituted by SI 2009/693). The provisions of the Health and Safety at Work etc Act 1974 s 44(2)-(6) (appeals in connection with licensing provisions) (see HEALTH AND SAFETY AT WORK vol 52 (2009) PARA 351) apply in respect of any such appeal: SI 2005/1082 reg 19 (as substituted).

6. Variation of licences

The licensing authority which grants a licence may vary¹ it (1) where there has been a change in circumstances such that the separation distances can no longer be maintained and a consequent reduction in the maximum amount of explosive that may be stored is required²; (2) where the Health and Safety Executive is the licensing authority in cases where the assent of the local authority was required³, or in specified cases where that assent was not required⁴, before the grant of the licence, and where there has been a material change in circumstances so that a variation is necessary to ensure safety⁵; or (3) in relation to any of the matters it relates to, by agreement with the licensee⁶.

A licence may be varied on the grounds referred to in head (1) or (2) above without the agreement of the licensee⁷. However, where a licensing authority proposes to vary a licence or registration without the agreement of the licensee or registered person it must, before taking any such action, notify the licensee of its proposed course of action and afford him the opportunity of making representations to the licensing authority about it, within a period of 28 days from the date of the notification⁸. The licensing authority which grants a registration may vary it (a) where there has been a change of circumstances such that the separation distances can no longer be maintained and a consequent reduction in the amount of explosives that may be stored is required so as to reduce that amount to a quantity specified by the licensing authority which is below the maximum amount specified⁹ for the kind or kinds of explosives concerned; (b) so as to change the period for which the registration is in force; and (c) in relation to any of the matters it relates to, by agreement with the person registered¹⁰. Subject to specified conditions¹¹, a registration may be varied on the grounds referred to in heads (a) and (b) without the agreement of the person who is registered¹².

Where the Health and Safety Executive is the licensing authority in cases where the assent of the local authority was required¹³ before the grant of the licence, the provisions relating to local authority assent¹⁴ apply in respect of a proposed variation¹⁵.

A person may appeal to the Secretary of State against a decision of a licensing authority to vary a registration without his agreement to the variation or refusing to vary a term of his registration¹⁶.

1 References to varying a licence includes varying its conditions: Manufacture and Storage of Explosives Regulations 2005, SI 2005/1082, reg 16(5).

2 Ibid reg 16(1)(a).

3 Ie pursuant to ibid reg 13(3).

- 4 Ie by virtue of reg 13(4)(e), (f).
- 5 Ibid reg 16(1)(b).
- 6 Ibid reg 16(1)(c).
- 7 Ibid reg 16(2).
- 8 Ibid reg 18(1)(b) (amended by SI 2009/693). Such representations may be made in writing, or both in writing and orally: SI 2005/1082 reg 18(2). Where the licensing authority decides to vary a licence or registration, it must provide in writing to the licensee the reasons for its decision: reg 18(3) (amended by SI 2009/693). Where the licensing authority varies a licence or registration without the agreement of the licensee or registered person that variation takes effect from a date to be determined by the licensing authority which must be a date after the period of 28 days from the date of the notification: SI 2005/1082 reg 18(4) (amended by SI 2009/693).
- 9 Ie under SI 2005/1082 reg 11(1).
- 10 Ibid reg 16(2A) (added by SI 2009/693).
- 11 Ie under SI 2005/1082 reg 18(1); see NOTE 8.
- 12 Ibid reg 16(2B) (added by SI 2009/693).
- 13 Ie under SI 2005/1082 reg 13(3).
- 14 Ie ibid reg 14.
- 15 Ibid reg 16(3). See also reg 16(4).
- 16 Ie under ibid reg 19(c) (reg 19 substituted by SI 2009/693). The provisions of the Health and Safety at Work etc Act 1974 s 44(2)-(6) (appeals in connection with licensing provisions) apply in respect of any such appeal: SI 2005/1082 reg 19 (as substituted).

7. Revocation of licences and registration

The licensing authority which grants a licence or registers a person¹ may revoke that licence or registration (1) where there has been a change in circumstances such that the site or, within it, any place in which explosives are manufactured or stored which the licence or, as the case may be, registration relates to is no longer suitable for that manufacture or storage of explosives²; (2) where it appears to the licensing authority on information obtained by it after the grant of the licence or registration that the licensee or registered person is not a fit person (a) to store explosives, in the case of a registered person or a person licensed to store explosives; or (b) to manufacture explosives, in the case of a person licensed to manufacture explosives³; or (3) by agreement with the licensee or registered person⁴. However, where a licensing authority proposes to revoke a licence or registration it must, before taking any such action, notify the registered person of its proposed course of action and afford him the opportunity of making representations to the licensing authority about it, within a period of 28 days from the date of the notification⁵.

A person whose licence or registration is revoked must ensure that (a) all explosives are removed from a site as soon as is practicable after revocation of a licence or registration in respect of that site⁶; (b) those explosives are deposited at a site which is the subject of a licence or registration which permits any storage resulting from that depositing, or suitable arrangements are made for those explosives to be disposed of⁷; and (c) the licence or certificate of registration is returned to the licensing authority within 28 days of the date that the revocation takes effect⁸.

A person may appeal to the Secretary of State against a decision of a licensing authority to revoke his registration⁹.

- 1 le under the Manufacture and Storage of Explosives Regulations 2005, SI 2005/1082, reg 11.
- 2 Ibid reg 17(1)(a).
- 3 Ibid reg 17(1)(b) (amended by SI 2009/693).
- 4 SI 2005/1082 reg 17(1)(c).
- 5 Ibid reg 18(1)(c). Such representations may be made in writing, or both in writing and orally: SI 2005/1082 reg 18(2). Where the licensing authority decides to revoke a licence or registration, it must provide in writing to the registered person the reasons for its decision: reg 18(3). Where the licensing authority revokes a licence or registration that revocation takes effect from a date to be determined by the licensing authority which must be a date after the period of 28 days from the date of the notification: reg 18(4).
- 6 Ibid reg 17(2)(a).
- 7 Ibid reg 17(2)(b).
- 8 le pursuant to ibid reg 18(4): reg 17(2)(c).
- 9 Ibid reg 19(d) (reg 19 substituted by SI 2009/693). The provisions of the Health and Safety at Work etc Act 1974 s 44(2)-(6) (appeals in connection with licensing provisions) apply in respect of any such appeal: SI 2005/1082 reg 19 (as substituted).

8. Transfer of licences and registration

A licence or registration may be transferred in writing by the licensing authority which issued the licence or registration to any other person who wishes to manufacture or store explosives in place of the licensee or the person who is registered and who applies to the licensing authority for the transfer¹. A licensing authority must grant an application for a transfer of a licence or registration unless it is of the opinion that the applicant is not a fit person¹ (1) to store explosives, in the case of an application to transfer a registration or a licence to store explosives; or (2) to manufacture explosives, in the case of an application to transfer a licence to do so². Subject to specified conditions³, where a licensing authority is of an opinion referred to in head (1) or (2), it must refuse the application to transfer the licence or registration⁴.

- 1 Manufacture and Storage of Explosives Regulations 2005, SI 2005/1082, reg 20(1) (reg 20 substituted by SI 2009/693).
- 2 SI 2005/1082 reg 20(2).
- 3 See ibid reg 18.
- 4 Ibid reg 20(3).

9. Death, bankruptcy or incapacity

If a licensee or registered person dies or becomes incapacitated, a person manufacturing or storing explosives in accordance with the conditions of the first-named person's licence or the terms of his registration is to be treated as being licensed or registered in accordance with the first-named person's licence or registration until either (1) the expiration of a period of 60 days starting with the date of such death or incapacity; (2) the grant or refusal of a new licence or registration; or (3) the transfer of, or a refusal to transfer, a licence or registration, whichever is the earlier¹. If a licensee or registered person becomes bankrupt or, in the case of a company, goes into liquidation or receivership or has a receiving order made against it, any receiver, trustee in bankruptcy or liquidator is to be treated as being the licensee or registered person².

- 1 Manufacture and Storage of Explosives Regulations 2005, SI 2005/1082, reg 21(1) (amended by SI 2009/693).

2 SI 2005/1082 reg 21(2).

10. Register and retention of documents

The licensing authority is required to maintain a register¹, keep a copy of any licence granted or certificate of registration issued by it, together with a copy of the application for the licence or registration, for as long as the licence or registration remains valid². Except where the Health and Safety Executive is the licensing authority, the authority must send to the Executive on request a copy of any part of the register, any licence it has granted, any certificate of registration it has issued or an application for a licence or registration within such time as the Executive may direct³.

1 Manufacture and Storage of Explosives Regulations 2005, SI 2005/1082, reg 22(1)(a). That register must be maintained in accordance with Sch 4: reg 22(1)(a). See further reg 22(2), Sch 4 (Sch 4 amended by SI 2009/693).

2 SI 2005/1082 reg 22(1)(b).

3 Ibid reg 22(1)(c).

UPDATE

924-970 Manufacture and Keeping of Explosives

The provisions of the Explosives Act 1875 and subordinate legislation relating to the manufacture and storage of explosives are largely replaced by the Manufacture and Storage of Explosives Regulations 2005, SI 2005/1082: see PARAS 924A-924E.

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

Halsbury's Laws of England/EXPLOSIVES (VOLUME 17(2) (REISSUE))/2. MANUFACTURE AND KEEPING OF EXPLOSIVES/(1) FACTORIES AND MAGAZINES/(i) Need for a Licence; Exemptions/924D. Prohibitions concerning certain explosives.

924D. Prohibitions concerning certain explosives.

No pyrotechnic which consists of sulphur or phosphorus mixed with chlorate of potassium or other chlorates or which contains any such mixture may be manufactured, stored or imported¹. However, this prohibition does not apply to any such pyrotechnic named in a list and approved by the Health and Safety Executive².

No person may acquire more than 50 kg of fireworks unless he ('Person A') or another person holds a valid licence or certificate of registration for the storage by Person A of those fireworks³. No person may sell or otherwise transfer to any person ('Person B') more than 50 kg of fireworks unless Person B shows a valid licence or certificate of registration for the storage by Person B of those fireworks, to the person selling or otherwise transferring the fireworks⁴.

1 Manufacture and Storage of Explosives Regulations 2005, SI 2005/1082, reg 24(1).

2 Ibid reg 24(2). A contravention of reg 24(1) concerning importation is punishable only under the Health and Safety at Work etc Act 1974 (see HEALTH AND SAFETY AT WORK): SI 2005/1082 reg 24(3).

3 Ibid reg 25(1)(a). Regulation 25 does not apply to a person who is transporting fireworks on behalf of another person: reg 25(2).

4 Ibid reg 25(1)(b).

UPDATE

924-970 Manufacture and Keeping of Explosives

The provisions of the Explosives Act 1875 and subordinate legislation relating to the manufacture and storage of explosives are largely replaced by the Manufacture and Storage of Explosives Regulations 2005, SI 2005/1082: see PARAS 924A-924E.

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

Halsbury's Laws of England/EXPLOSIVES (VOLUME 17(2) (REISSUE))/2. MANUFACTURE AND KEEPING OF EXPLOSIVES/(1) FACTORIES AND MAGAZINES/(i) Need for a Licence; Exemptions/924E. Power to grant exemptions.

924E. Power to grant exemptions.

The Health and Safety Executive may, by a certificate in writing, exempt any person or class of persons or any explosive or class of explosives from any requirement or prohibition¹, and any such exemption may be granted subject to such conditions and to a limit of time and may be revoked in writing at any time². However, the Executive may not grant any such exemption unless, having regard to the circumstances of the case, and in particular to the conditions, if any, which it proposes to attach to the exemption, and any other requirements imposed by or under any enactment which apply to the case, it is satisfied that the health and safety of persons who are likely to be affected by the exemption will not be prejudiced in consequence of it³.

The Secretary of State for Defence may, in the interests of national security, by a certificate in writing, exempt any of Her Majesty's Forces⁴, any visiting force⁵, any headquarters⁶ or any civilian employee or class of civilian employees of the Ministry of Defence from all or any of the explosives requirements or prohibitions⁷. Any such exemption may be granted subject to conditions and to a limit of time and may be revoked by the Secretary of State for Defence by a further certificate in writing at any time⁸.

¹ ie any requirement or prohibition imposed by the Manufacture and Storage of Explosives Regulations 2005, SI 2005/1082.

² Ibid reg 26(1).

³ Ibid reg 26(2).

⁴ 'Her Majesty's Forces' means any of the naval, military or air forces of the Crown, whether raised inside or outside the United Kingdom and whether any such force is a regular, auxiliary or reserve force, and includes any civilian employee of the Ministry of Defence attached to those forces: *ibid* reg 2(1).

⁵ 'Visiting force' has the same meaning as it does for the purposes of any provision of the Visiting Forces Act 1952 (see ARMED FORCES vol 2(2) (Reissue) PARA 140): SI 2005/1082 reg 2(1).

⁶ 'Headquarters' means a headquarters for the time being specified in the Visiting forces and International Headquarters (Application of Law) Order 1999 Sch 2 (see ARMED FORCES vol 2(2) (Reissue) PARA 150): SI 2005/1082 reg 2(1).

⁷ ie the requirements or prohibitions imposed by SI 2005/1082: reg 26(3).

⁸ Ibid reg 26(3).

UPDATE

924-970 Manufacture and Keeping of Explosives

The provisions of the Explosives Act 1875 and subordinate legislation relating to the manufacture and storage of explosives are largely replaced by the Manufacture and Storage of Explosives Regulations 2005, SI 2005/1082: see PARAS 924A-924E.

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

Halsbury's Laws of England/EXPLOSIVES (VOLUME 17(2) (REISSUE))/2. MANUFACTURE AND KEEPING OF EXPLOSIVES/(1) FACTORIES AND MAGAZINES/(i) Need for a Licence; Exemptions/925. Where manufacture may be carried on.

925. Where manufacture may be carried on.

Subject to the exceptions mentioned in the following paragraphs¹, neither the manufacture of any explosive², nor any process of such manufacture, may be carried on except at a 'lawfully existing' factory³, or at a factory licensed under the Explosives Act 1875⁴. When any explosive is manufactured at an unauthorised place (by which is meant a place other than a 'lawfully existing' or duly licensed factory), the person⁵ so manufacturing is guilty of an offence⁶.

Any person who carries on any of the following processes, namely the process of dividing into its component parts or otherwise breaking up or unmaking any explosive, or of making fit for use any damaged explosive, or the process of remaking, altering or repairing any explosive, is subject to the relevant statutory provisions⁷ as if he manufactured an explosive, and 'manufacture' is to be construed accordingly⁸.

1 See PARA 926 et seq post. As to the exemption of government departments etc see PARA 909 ante.

2 For the meaning of 'explosive' see PARA 905 ante.

3 As to 'lawfully existing' factories see PARA 928 post.

4 Explosives Act 1875 s 4. See also s 39.

5 'Person' includes a body corporate: *ibid* s 108.

6 *Ibid* s 4 (amended by the Explosives Acts 1875 and 1923 etc (Repeals and Modifications) Regulations 1974, SI 1974/1885, regs 2(b), 9, Sch 2 para 1). See also the Explosives Act 1875 s 39. As to the penalties for such an offence see PARA 1017 post.

7 *Ie* the Explosives Act 1875 and any subordinate legislation made thereunder: see s 108.

8 *Ibid* s 105.

UPDATE

924-970 Manufacture and Keeping of Explosives

The provisions of the Explosives Act 1875 and subordinate legislation relating to the manufacture and storage of explosives are largely replaced by the Manufacture and Storage of Explosives Regulations 2005, SI 2005/1082: see PARAS 924A-924E.

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

Halsbury's Laws of England/EXPLOSIVES (VOLUME 17(2) (REISSUE))/2. MANUFACTURE AND KEEPING OF EXPLOSIVES/(1) FACTORIES AND MAGAZINES/(i) Need for a Licence; Exemptions/926. Exceptions.

926. Exceptions.

The occupier¹ of a factory for any explosive is not required to take out a factory licence for making up, in his factory, the explosive made there into cartridges or charges for cannon or blasting not containing within themselves their own means of ignition². The prohibition against the manufacture of explosives except at a 'lawfully existing' or licensed factory does not apply to the manufacture of a small quantity of explosive for the purpose of chemical experiment and not for practical use or sale³.

The occupier of a factory for any explosive who manufactures a new explosive or new form of explosive similar to that specified in his licence is not to be deemed to have manufactured it at an 'unauthorised place' if he manufactures it on a small scale and exclusively for the purposes of trial and not for sale, notifies the Health and Safety Executive⁴ as soon as he has manufactured it, and observes the relevant statutory provisions⁵, including those of his licence so far as they are applicable⁶.

The occupier of a magazine⁷, store⁸ or registered premises for any explosive need not take out a factory licence for the purpose of filling cartridges for small arms there, subject to observing certain rules⁹. A mine or quarry owner, being the occupier of a magazine or store for any explosive, need not take out a factory licence in order to adapt or prepare the explosive there for use in his own mine or quarry, subject to observing certain rules¹⁰.

1 'Occupier' includes any number of persons and a body corporate and, in the case of any manufacture or trade, includes the person carrying on the manufacture or trade: Explosives Act 1875 s 108.

2 Ibid s 44. This applies more particularly to continuing certificate factories, as in other cases a factory licence must already have been obtained: see PARA 928 post.

3 Ibid s 4. See also s 39.

4 As to the Health and Safety Executive see HEALTH AND SAFETY AT WORK vol 52 (2009) PARAS 361-371.

5 Ie the Explosives Act 1875 and any statutory order: see PARA 903 ante. As to the scope of the term 'statutory order' see PARA 903 ante.

6 Ibid ss 45, 108 (s 45 amended by the Explosives Acts 1875 and 1923 etc (Repeals and Modifications) Regulations 1974, SI 1974/1885, regs 2(b), 9, Sch 2 para 3).

7 For the meaning of 'magazine' see PARA 909 note 1 ante.

8 For the meaning of 'store' see PARA 909 note 2 ante.

9 See the Explosives Act 1875 s 46 (as amended); and PARA 929 post.

10 See the Explosives Act 1875 s 47 (as amended); and PARA 930 post.

UPDATE

924-970 Manufacture and Keeping of Explosives

The provisions of the Explosives Act 1875 and subordinate legislation relating to the manufacture and storage of explosives are largely replaced by the Manufacture and Storage of Explosives Regulations 2005, SI 2005/1082: see PARAS 924A-924E.

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

Halsbury's Laws of England/EXPLOSIVES (VOLUME 17(2) (REISSUE))/2. MANUFACTURE AND KEEPING OF EXPLOSIVES/(1) FACTORIES AND MAGAZINES/(i) Need for a Licence; Exemptions/927. Where explosives may be kept.

927. Where explosives may be kept.

Subject to certain exceptions¹, an explosive² must not be kept at any place except (1) in the factory, whether 'lawfully existing'³ or licensed, in which it is manufactured⁴; or (2) in a magazine or store⁵, either 'lawfully existing'⁶ or licensed⁷; or (3) in premises registered under the Explosives Act 1875 for the purpose⁸. Where any explosive is kept in an 'unauthorised place', that is (except in the excepted cases), any place other than those mentioned above, the occupier⁹ of the place, and also the owner of, or other person guilty of keeping, the explosive, are each guilty of an offence¹⁰.

1 As to government departments etc and lighthouse authorities see PARA 909 ante. The other exceptions relate to carriers and others keeping explosives for purposes of conveyance when being kept subject to the provisions of the Explosives Act 1875 and orders relating to conveyance (see s 5 proviso (2); and for the provisions as to conveyance see PARA 989 et seq post); railway fog signals (see PARA 910 ante); and explosives kept in small quantities for private use and not for sale (see PARA 931 post). For an exception relating to fireworks factories see PARA 951 note 11 post.

2 For the meaning of 'explosive' see PARA 905 ante.

3 As to 'lawfully existing' factories see PARA 928 post.

4 Explosives Act s 5(1). Although the express exception in favour of the keeping of an explosive in a factory magazine is confined to the explosive there manufactured, The Explosives Inspectorate has considered that the keeping in a factory magazine of an explosive not manufactured in the factory, but required for the manufacture or testing of another explosive there, may be authorised by the licence. For the meaning of 'factory magazine' see PARA 939 note 3 post. Every factory must include a magazine which is the factory magazine. In addition the licence may or may not permit further magazines which are licensed for explosives which may or may not be manufactured at that factory. The test for whether or not the keeping of a particular explosive in such a magazine is lawful will reside in an examination of the terms of the licence which may or may not permit such keeping. See generally Order in Council (No 3) dated 27 November 1875

5 For the meaning of 'magazine' see PARA 909 note 1 ante; and for the meaning of 'store' see PARA 909 note 2 ante.

6 As to 'lawfully existing' magazines and stores see PARAS 928, 961 post.

7 Explosives Act 1875 s 5(2).

8 Ibid s 5(3). As to registered premises see PARA 962 post. As to the keeping of explosives see also the Classification and Labelling of Explosives Regulations 1983, SI 1983/1140 (as amended); and PARA 904 ante.

9 For the meaning of 'occupier' see PARA 926 note 1 ante.

10 Explosives Act 1875 s 5 (amended by the Explosives Acts 1875 and 1923 etc (Repeals and Modifications) Regulations 1974, SI 1974/1885, regs 2(b), 9, Sch 2 para 2). See also the Explosives Act 1875 s 39. As to the penalties for such an offence see PARA 1017 post. As to disposal, in the City of London, of containers which have been, but no longer are, used for the storage of explosive substances see the City of London (Various Powers) Act 1961 s 41 (as amended); Local Law (Greater London Council and Inner London Boroughs) Order 1965, SI 1965/540, art 3, Sch 1 para 100(a); and LONDON GOVERNMENT.

UPDATE

924-970 Manufacture and Keeping of Explosives

The provisions of the Explosives Act 1875 and subordinate legislation relating to the manufacture and storage of explosives are largely replaced by the Manufacture and Storage of Explosives Regulations 2005, SI 2005/1082: see PARAS 924A-924E.

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

Halsbury's Laws of England/EXPLOSIVES (VOLUME 17(2) (REISSUE))/2. MANUFACTURE AND KEEPING OF EXPLOSIVES/(1) FACTORIES AND MAGAZINES/(i) Need for a Licence; Exemptions/928. Continuing certificates.

928. Continuing certificates.

Subject to certain conditions, explosives may be lawfully manufactured or kept, as the case may be, in a 'lawfully existing' factory or magazine¹, that is to say, in a factory or magazine which was in use on 14 June 1875² and for which a continuing certificate of the Secretary of State is held³.

For the purposes of the Explosives Act 1875 and of any statutory order⁴, a continuing certificate is (except as otherwise expressly provided) deemed to be a licence, and the factory or magazine mentioned in it is deemed to be a factory or magazine licensed under the Act⁵.

In the case of a gunpowder factory certain regulations with regard to the quantity of gunpowder to be allowed in various machines and parts of the factory, and other conditions⁶, are deemed to form part of the terms of the continuing certificate⁷. In the case of other explosives the Secretary of State is empowered to insert terms in the certificate similar to conditions contained in the former licence⁸.

1 For the meaning of 'magazine' see PARA 909 note 1 ante.

2 See the Explosives Act 1875 ss 4, 5 (as amended), 39. 'Existing' means existing at the passing of the Explosives Act 1875, ie on 14 June 1875: s 108.

3 See *ibid* s 14 (amended by the Statute Law (Revision) Act 1898; and the Statute Law (Repeals) Act 1993). A factory or magazine for explosives, which was used at the time of the passing of the Explosives Act 1875, should not be deemed to be a 'lawfully existing' factory or magazine unless the occupier had applied for and obtained a continuing certificate in respect of the factory or magazine: see s 14 (as so amended), s 39. Application had to be made within three months of the commencement of the Act, ie 1 January 1876. As to the Secretary of State see PARA 913 ante.

4 As to the scope of the term 'statutory order' see PARA 903 ante.

5 Explosives Act 1875 s 14 (as amended: see note 3 ante). See also s 39.

6 See *ibid* s 14, Sch 1 Pt I (amended by the Explosives Act 1875 etc (Metrication and Miscellaneous Amendment) Regulations 1984, SI 1984/510, reg 2, Sch 1).

7 See the Explosives Act 1875 s 51.

8 See *ibid* s 51.

UPDATE

924-970 Manufacture and Keeping of Explosives

The provisions of the Explosives Act 1875 and subordinate legislation relating to the manufacture and storage of explosives are largely replaced by the Manufacture and Storage of Explosives Regulations 2005, SI 2005/1082: see PARAS 924A-924E.

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

Halsbury's Laws of England/EXPLOSIVES (VOLUME 17(2) (REISSUE))/2. MANUFACTURE AND KEEPING OF EXPLOSIVES/(1) FACTORIES AND MAGAZINES/(i) Need for a Licence; Exemptions/929. Rooms for filling cartridges.

929. Rooms for filling cartridges.

The occupier¹ of a magazine, store² or registered premises for any explosive is not required to take out a factory licence by reason that, in connection with the magazine, store or premises he fills for sale or otherwise any cartridge for small arms with the said explosive, if he observes the following regulations³:

- 24 (1) there must not be in the room⁴ in which the filling is being carried on more than 2 kg of gunpowder or the prescribed amount of any other explosive, unless it is made up into safety cartridges⁵;
- 25 (2) work unconnected with the making of the cartridges must not be carried on in the room while the filling is being carried on⁶;
- 26 (3) there must not be in the room while the filling is being carried on any fire or any artificial light except a light of such construction, position or character as not to cause danger of fire or explosion⁷;
- 27 (4) in the case of a magazine or store, the room in which the filling is carried on must be detached from the magazine or store, but in its immediate neighbourhood, and at such distance from it as may be specified, in the case of a magazine, by the licence, and in the case of a store, by Orders in Council⁸;
- 28 (5) the occupier must give notice, in the case of a magazine, to the Health and Safety Executive, and, in the case of a store or registered premises, to the local authority⁹, that he intends to carry on such filling of cartridges as is allowed by the relevant statutory provisions¹⁰.

1 For the meaning of 'occupier' see PARA 926 note 1 ante.

2 For the meaning of 'magazine' see PARA 909 note 1 ante; and for the meaning of 'store' see PARA 909 note 2 ante.

3 Explosives Act s 46 (amended by the Explosives Acts 1875 and 1923 etc (Repeals and Modifications) Regulations 1974, SI 1974/1885, regs 2(b), 9, Sch 2 para 3; and the Explosives Acts 1875 etc (Metrication and Miscellaneous Amendment) Regulations 1984, SI 1984/510, reg 2, Sch 1). The Explosives Act 1875 s 46 (as so amended) does not apply, except with the consent of the Health and Safety Executive, to a magazine or store for which a continuing certificate has been obtained (see PARA 928 ante); that consent may be granted absolutely or upon such conditions as are thought necessary for public safety, and any conditions imposed by the consent are deemed to be general rules relating to the magazine, store or registered premises, and any breach of them is punishable accordingly: s 46 proviso (amended by the Explosives Acts 1875 and 1923 etc (Repeals and Modifications) Regulations 1974 SI 1974/1885, regs 2(b), 9, Sch 2 para 3). As to breach of general rules relating to magazines, stores and premises see PARAS 941, 959, 966 post. As to the Health and Safety Executive see HEALTH AND SAFETY AT WORK vol 52 (2009) PARAS 361-371.

4 It is not clear whether more than one room may be used, but the practice is not to interfere where more than one room is used so long as the total quantity of explosive in all the rooms does not exceed that prescribed. The view of the Explosives Inspectorate is that only one room may be used, but that the Explosives Act 1875 s 46 is open to interpretation. The point has not been tested in court.

5 Ibid s 46(1) (amended by the Explosives Acts 1875 etc (Metrication and Miscellaneous Amendment) Regulations 1984, SI 1984/510, reg 2, Sch 1). In the case of magazines for explosives other than gunpowder and of stores for mixed explosives, the prescribed amount of other explosive is 5 lb by Orders in Council (No 3) and (No 6) dated 27 November 1875, Pts II and III, respectively (Orders in Council (No 3) and (No 6) both amended by SI 1984/510). For registered premises the prescribed amount is 500 g of small-arm nitro-compound only by Order in Council (No 16), SR & O 1896/964 (amended by SI 1984/510; SI 1991/1531). In every case the 5 lb can be partly gunpowder and partly the other explosive. For the meaning of 'safety cartridges' see PARA 908

note 11 ante. Order in Council (No 6) dated 27 November 1875 allows the quantity of gunpowder to be replaced with equal quantity of other explosives under the conditions specified in the Explosives Act 1875 s 46.

6 Ibid s 46(2).

7 Ibid s 46(3).

8 Ibid s 46(4). For these Orders in Council see PARA 956 post.

9 As to local authorities see PARA 921 ante.

10 Explosives Act 1875 s 46(5) (amended by the Explosives Acts 1875 and 1923 etc (Repeals and Modifications) Regulations 1974, SI 1974/1885, regs 2(b), 9, Sch 2 para 3). The relevant statutory provision is the Explosives Act 1875 s 46 (as amended: see note 3 supra). The regulations in s 46 (as amended: see note 3 supra), and any conditions made by the Health and Safety Executive under s 46(5), are deemed to be general rules under the Explosives Act 1875 relating to magazines, stores and registered premises respectively, and any breach of them is punishable accordingly: s 46 proviso (amended by the Explosives Acts 1875 and 1923 etc (Repeals and Modifications) Regulations 1974, SI 1974/1885, regs 2(b), 9, Sch 2 para 3). As to such general rules see PARAS 939, 940, 957, 958, 963-965 post.

UPDATE

924-970 Manufacture and Keeping of Explosives

The provisions of the Explosives Act 1875 and subordinate legislation relating to the manufacture and storage of explosives are largely replaced by the Manufacture and Storage of Explosives Regulations 2005, SI 2005/1082: see PARAS 924A-924E.

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

Halsbury's Laws of England/EXPLOSIVES (VOLUME 17(2) (REISSUE))/2. MANUFACTURE AND KEEPING OF EXPLOSIVES/(1) FACTORIES AND MAGAZINES/(i) Need for a Licence; Exemptions/930. Workshops.

930. Workshops.

The occupier¹ of any magazine or store² for any explosive is not required to take out a factory licence by reason that, in connection with the magazine or store, he, by filling cartridges, making charges, drying, sifting, fitting or otherwise, adapts or prepares the explosive for use exclusively in his mine or quarry, or in some excavation or work carried on by him or under his control, if he observes the following regulations³:

- 29 (1) there must not be in the workshop in which the adaptation or preparation is carried on more than 50 kg of gunpowder or the prescribed amount of any other explosive⁴;
- 30 (2) work unconnected with the adaptation or preparation must not be carried on in the workshop while the adaptation or preparation is being carried on⁵;
- 31 (3) the workshop must be detached from the magazine or store, but in its immediate neighbourhood, and at such distance from it as may be specified, in the case of a magazine by the licence, and in the case of a store by Orders in Council⁶ relating to stores⁷;
- 32 (4) an explosive of one description must not be converted into an explosive of another description, and must not be unmade or resolved into its ingredients⁸;
- 33 (5) the occupier must give notice, in the case of a magazine, to the Health and Safety Executive, and, in the case of a store, to the local authority, that he intends to carry on the adaptation or preparation⁹.

If the adaptation or preparation carried on is of gunpowder only, the general rules with respect to gunpowder factories apply, and if the adaptation or preparation is of any other explosive, the general rules applicable to factories of other explosives apply as if the workshop were a danger building¹⁰; and any breach of such general rules is punishable in the same way as a breach of general rules with respect to a factory¹¹.

1 For the meaning of 'occupier' see PARA 926 note 1 ante.

2 For the meaning of 'magazine' see PARA 909 note 1 ante; and for the meaning of 'store' see PARA 909 note 2 ante.

3 Explosives Act 1875 s 47 (amended by the Explosives Acts 1875 and 1923 etc (Repeals and Modifications) Regulations 1974, SI 1974/1885, regs 2(b), 9, Sch 2 para 3; and the Explosives Acts 1875 etc (Metrication and Miscellaneous Amendment) Regulations 1984, SI 1984/510, reg 2, Sch 1). The Explosives Act 1875 s 47 (as so amended) does not apply, except with the consent of the Health and Safety Executive, to a magazine or store under a continuing certificate (see PARA 928 ante); that consent may be granted absolutely or upon such conditions as are thought necessary for public safety, and any conditions imposed by the consent are deemed to be general rules relating to the magazine or store, and any breach of them is punishable accordingly: see s 47 proviso (amended by the Explosives Acts 1875 and 1923 etc (Repeals and Modifications) Regulations 1974, SI 1974/1885, regs 2(b), 9, Sch 2 para 3). As to the Health and Safety Executive see HEALTH AND SAFETY AT WORK vol 52 (2009) PARAS 361-371.

4 Explosives Act 1875 s 47(1) (amended by the Explosives Act 1875 etc (Metrication and Miscellaneous Amendment) Regulations 1984, SI 1984/510, reg 2, Sch 1). The prescribed amount in the case of an explosive other than gunpowder is 50 kg: see Order in Council (No 3) dated 27 November 1875, Pt III (amended by SI 1951/1164; SI 1984/510), relating to magazines for explosives other than gunpowder, whether with or without gunpowder; and Order in Council (No 6) dated 27 November 1875, Pt IV (amended by SI 1951/1163; SI 1984/510), relating to stores for mixed explosives. Order in Council (No 6) dated 27 November 1875 allows the

quantity of gunpowder to be replaced with equal quantity of other explosives under the conditions specified in the Explosives Act 1875 s 47.

5 Ibid s 47(2).

6 For these Orders in Council see PARA 956 post.

7 Explosives Act 1875 s 47(3).

8 Ibid s 47(4). The conversion of gunpowder into 'dynamite' by adding nitro-glycerine, and the extraction of nitro-glycerine from dynamite, are instances of the processes prohibited.

9 Ibid s 47(5) (amended by the Explosives Acts 1875 and 1923 etc (Repeals and Modifications) Regulations 1974, SI 1974/1885, regs 2(b), 9, Sch 2 para 3). As to local authorities see PARA 921 ante. The regulations in the Explosives Act 1875 s 47 (as amended: see note 3 supra), and any conditions made by the Health and Safety Executive under s 47(5), are deemed to be general rules under the Explosives Act 1875 relating to magazines, stores and registered premises respectively, and any breach of them is punishable accordingly: s 47 proviso (amended by the Explosives Acts 1875 and 1923 etc (Repeals and Modifications) Regulations 1974, SI 1974/1885, regs 2(b), 9, Sch 2 para 3). As to such general rules see PARAS 939, 940, 957, 958 post.

10 For the meaning of 'danger building' see PARA 939 note 5 post.

11 See the Explosives Act 1875 s 47 (as amended: see note 3 supra). As to the general rules for factories see PARAS 939, 940 post.

UPDATE

924-970 Manufacture and Keeping of Explosives

The provisions of the Explosives Act 1875 and subordinate legislation relating to the manufacture and storage of explosives are largely replaced by the Manufacture and Storage of Explosives Regulations 2005, SI 2005/1082: see PARAS 924A-924E.

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

Halsbury's Laws of England/EXPLOSIVES (VOLUME 17(2) (REISSUE))/2. MANUFACTURE AND KEEPING OF EXPLOSIVES/(1) FACTORIES AND MAGAZINES/(i) Need for a Licence; Exemptions/931. Explosives for private use.

931. Explosives for private use.

The prohibition against keeping explosives¹, except in licensed or lawfully existing magazines or stores² or in premises registered for the purpose³ does not apply to the keeping of explosives for private use in accordance with the provisions described below⁴. No person may keep any explosive for private use except:

- 34 (1) gunpowder⁵;
- 35 (2) smokeless powder⁶;
- 36 (3) any propellant made or adapted and, in either case, intended exclusively for small arms ammunition⁷;
- 37 (4) explosives (eg signal cartridges) listed in the relevant statutory provisions⁸.

No person may keep any explosive in any premises for private use except one or more of the following:

- 38 (a) any quantity of fireworks which are kept for less than 14 days before being used and are kept in a safe and suitable place with all due precautions for public safety⁹;
- 39 (b) any quantity of fog signals kept by any railway operator for use on the railway if packaged so as to be compatible for the purposes of the relevant statutory provisions¹⁰;
- 40 (c) such quantity of percussion caps or small arms ammunition or a mixture of them as will ensure that the quantity of explosives kept in the premises does not exceed 15 kg¹¹;
- 41 (d) such quantity of gunpowder as will ensure that the quantity of explosives kept in the premises including any explosives kept by other persons, does not exceed 10 kg¹²;
- 42 (e) such quantity of any explosive mentioned in the relevant statutory provisions¹³ as will ensure that the quantity of explosives kept in the premises¹⁴, including any explosives kept by other persons, does not exceed 5 kg¹⁵.

These provisions do not apply to the keeping of any explosive in a licensed factory or magazine, a store, registered premises or premises occupied on behalf of the Crown¹⁶.

Certain provisions¹⁷ do not apply to the acquisition or keeping of explosives by or on behalf of:

- 43 (i) a person exercising a power of seizure under the relevant statutory provision¹⁸;
- 44 (ii) a constable acting in the execution of his duties¹⁹;
- 45 (iii) a person acting as mentioned in the Police Act 1996²⁰ who is duly authorised in writing by the chief officer of police for the relevant police area²¹;
- 46 (iv) a customs officer acting in the performance of his functions²².

The same provisions²³ also do not apply to:

- 47 (A) the Crown, in respect of any explosive which is in premises occupied on behalf of the Crown for, or is intended for use for, naval, military or air force purposes or the purposes of the department of the Secretary of State²⁴;
- 48 (B) the service authorities of visiting forces²⁵ or any headquarters or organisation designated for the purposes of the International Headquarters and Defence Organisations Act 1964²⁶;
- 49 (C) a police force²⁷;
- 50 (D) the Health and Safety Executive²⁸.

The Act and statutory orders do not apply to the filling or conveying for private use, and not for sale, of any safety cartridges to the amount allowed by or under the above provisions to be kept for private use²⁹.

1 'Explosive' means any explosive article or explosive substance (as each is defined in the Classification and Labelling of Explosives Regulations 1983, SI 1983/1140, reg 2(1) which has been assigned on classification under those 1983 Regulations to Class 1: Control of Explosives Regulations 1991, SI 1991/1531, reg 2(1).

2 For the meaning of 'magazine' see PARA 909 note 1 ante; and for the meaning of 'store' see PARA 909 note 2 ante.

3 See the Explosives Act 1875 s 5 (as amended); and PARA 927 ante.

4 See *ibid* s 5 proviso (1) (substituted by the Control of Explosives Regulations 1991, SI 1991/1531, reg 19(1), Sch 4 Pt I). See also the Explosives Act 1875 s 39. The keeping of fog signals for use on railways is exempt: see s 50 (as amended); and PARA 910 ante.

5 Control of Explosives Regulations 1991, SI 1991/1531, reg 10(1)(a), (3). For the meaning of 'gunpowder' see PARA 908 ante.

6 *Ibid* reg 10(1)(b), (3). 'Smokeless powder' means the explosive substances allocated on classification under the Classification and Labelling of Explosives Regulations 1983, SI 1983/1140 (as amended) the UN number 0160 or 0161 and which are intended exclusively for use in small arms: Control of Explosives Regulations 1991, SI 1991/1531, reg 2(1).

7 *Ibid* reg 10(1)(c), (3). 'Small arms ammunition' means the explosive articles allocated on classification under the Classification and Labelling of Explosives Regulations 1983, SI 1983/1140 (as amended) the UN number 0012, 0014 or 0055 and which are intended exclusively for use in small arms: Control of Explosives Regulations 1991, SI 1991/1531, reg 2(1).

8 *Ibid* reg 10(1)(d), (3). The relevant statutory provision is the Control of Explosives Regulations 1991, SI 1991/1531, Sch 1.

9 *Ibid* reg 10(2)(a). 'Fireworks' means the explosive articles allocated on classification under the Classification and Labelling of Explosives Regulations 1983, SI 1983/1140 (as amended) the UN number 0333 to 0337: Control of Explosives Regulations 1991, SI 1991/1531, reg 2(1).

10 *Ibid* reg 10(2)(b). The relevant statutory provision is the Control of Explosives Regulations 1991, SI 1991/1531. 'Fog signals' means the explosive articles allocated on classification under the Classification and Labelling of Explosives Regulations 1983, SI 1983/1140 (as amended) the UN number 0193: Control of Explosives Regulations 1991, SI 1991/1531, reg 2(1).

11 *Ibid* reg 10(2)(c). As to 'percussion caps' see PARA 908 ante.

12 *Ibid* reg 10(2)(d).

13 *Ie* *ibid* reg 10(1).

14 *Ie* explosives kept in the premises under *ibid* reg 10(2).

15 *Ibid* reg 10(2)(e).

16 *Ibid* reg 10(3).

- 17 le ibid regs 7, 10.
- 18 Ibid reg 3(3)(a). The relevant statutory provision is the Explosives Act 1875 s 74.
- 19 Control of Explosives Regulations 1991, SI 1991/1531, reg 3(3)(b).
- 20 Ibid reg 3(3)(c) refers to the Police Act 1964; see now the Police Act 1996 s 15.
- 21 Control of Explosives Regulations 1991, SI 1991/1531, reg 3(3)(c). As to police areas and chief officers of police see POLICE. vol 36(1) (2007 Reissue) PARAS 136-138, 105.
- 22 Ibid reg 3(3)(d). As to customs officers generally see CUSTOMS AND EXCISE vol 12(3) (2007 Reissue) PARA 901 et seq.
- 23 le ibid regs 7, 10.
- 24 Ibid reg 3(4)(a).
- 25 le visiting forces within the meaning of the Visiting Forces Act 1952 Pt I (ss 1-12) (as amended). See also ARMED FORCES.
- 26 Control of Explosives Regulations 1991, SI 1991/1531, reg 3(4)(b).
- 27 Ibid reg 3(4)(c).
- 28 Ibid reg 3(4)(d).
- 29 Explosives Act 1875 s 41 (substituted by SI 1991/1531). As to the scope of the term 'statutory order' see PARA 903 ante.

UPDATE

924-970 Manufacture and Keeping of Explosives

The provisions of the Explosives Act 1875 and subordinate legislation relating to the manufacture and storage of explosives are largely replaced by the Manufacture and Storage of Explosives Regulations 2005, SI 2005/1082: see PARAS 924A-924E.

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

931 Explosives for private use

NOTES 8, 20, 21--SI 1991/1531 reg 3(3)(c), Sch 1 amended: SI 2009/693.

Halsbury's Laws of England/EXPLOSIVES (VOLUME 17(2) (REISSUE))/2. MANUFACTURE AND KEEPING OF EXPLOSIVES/(1) FACTORIES AND MAGAZINES/(i) Need for a Licence; Exemptions/932. Quantity allowed.

932. Quantity allowed.

Where the quantity of explosive¹ or its ingredients allowed in a building at one time is limited by or under the Explosives Act 1875, all explosives and ingredients within the radius of 20 metres from the building and in course of removal from or to the building for the supply and work thereof are to be deemed to be in the building². However, if, while the explosive or its ingredients are within that radius in course of removal, every machine and manufacturing process in the building is wholly stopped, there may, in addition to the limited quantity, be within the radius a further quantity, not exceeding that specified in the licence, or, in the case of an existing building in a lawfully existing factory, 500 kg, or any less quantity allowed as mentioned above to be in the building³.

Where the quantity allowed to be in any machine is limited by or under the Act, but the quantity allowed in the building is not limited, these provisions apply, so far as circumstances admit, as if the machine were a building⁴. Where the quantity allowed to be in a building is limited to what is required for immediate supply and work, or by words not specifying the exact quantity, an inspector⁵ who considers the quantity in the building is in excess may, after hearing the occupier's⁶ explanation, require him to reduce the quantity to a specified maximum⁷.

1 For the meaning of 'explosive' see PARA 905 ante.

2 Explosives Act 1875 s 24 (amended by the Explosives Act 1875 (Metrication and Miscellaneous Amendment) Regulations 1984, SI 1984/510). See also the Explosives Act 1875 s 39. For the meaning of 'lawfully existing' see PARA 928 ante.

3 Ibid s 24 proviso (as amended: see note 2 supra). See also s 39.

4 Ibid s 24. See also s 39.

5 I.e. an inspector appointed by the Health and Safety Executive: see PARA 914 ante. As to the Health and Safety Executive see HEALTH AND SAFETY AT WORK vol 52 (2009) PARAS 361-371.

6 For the meaning of 'occupier' see PARA 926 note 1 ante.

7 Explosives Act 1875 s 24 (amended by the Explosives Acts 1875 and 1923 etc (Repeals and Modifications) Regulations 1974, SI 1974/1885, reg 2(b), Sch 2 para 5). See also the Explosives Act 1875 s 39.

UPDATE

924-970 Manufacture and Keeping of Explosives

The provisions of the Explosives Act 1875 and subordinate legislation relating to the manufacture and storage of explosives are largely replaced by the Manufacture and Storage of Explosives Regulations 2005, SI 2005/1082: see PARAS 924A-924E.

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

Halsbury's Laws of England/EXPLOSIVES (VOLUME 17(2) (REISSUE))/2. MANUFACTURE AND KEEPING OF EXPLOSIVES/(1) FACTORIES AND MAGAZINES/(ii) Application for Licence/933. Draft licence.

(ii) Application for Licence

933. Draft licence.

An applicant for a factory or magazine¹ licence must submit to the Health and Safety Executive² a draft licence accompanied by a scale plan of the proposed factory or magazine and of its site³. The draft licence must contain the terms which the applicant proposes to have inserted in the licence, and must specify such of certain other matters as may be applicable⁴. Except where the explosive⁵ to be manufactured or kept is gunpowder, the draft licence must specify such particulars as the Executive may require⁶, in addition to such as are required in the case of a factory or magazine for gunpowder⁷.

After examination of the proposal, the Health and Safety Executive may reject the application altogether, or may approve the draft licence, either with or without modification or addition, and grant permission to the applicant to apply to the local authority for its assent to the establishment of the factory or magazine on the proposed site⁸.

1 For the meaning of 'magazine' see PARA 909 note 1 ante.

2 As to the Health and Safety Executive see HEALTH AND SAFETY AT WORK vol 52 (2009) PARAS 361-371.

3 Explosives Act 1875 s 6 (amended by the Explosives Acts 1875 and 1923 etc (Repeals and Modifications) Regulations 1974, SI 1974/1885, regs 2(b), 9, Sch 2 para 3). See also the Explosives Act 1875 s 39. The plan is deemed to form part of the licence and is thus incorporated in s 6 (as so amended): see PARA 3 ante.

4 Ibid s 6 (as amended: see note 3 supra). These matters relate to the boundaries of the site; the distance to be maintained from buildings, works or public places outside the factory or magazine; particulars of the factory or magazine, buildings and works, and their distances from each other; the nature of the processes to be carried on, with details of places where the different work is to be carried on and where the ingredients are to be kept; the amount of explosive to be allowed at one time in any building, machine or process of the manufacture; the situation and capacity of each factory magazine; the maximum number of persons to be employed in each building; and any special terms proposed: see s 6(a)-(g). For the meaning of 'factory magazine' see PARA 939 note 3 post.

5 For the meaning of 'explosive' see PARA 905 ante.

6 Explosives Act 1875 s 40(1) (amended by the Explosives Acts 1875 and 1923 etc (Repeals and Modifications) Regulations 1974, SI 1974/1885, regs 2(b), 9, Sch 2 paras 3, 14).

7 See note 4 supra. It is the practice to enforce the requirements specified in the Explosives Act 1875 s 6 (as amended: see note 3 supra), and in addition to require special particulars, in some cases, to meet the peculiarities of the explosive to be manufactured.

8 Ibid s 6 (as amended: see note 3 supra). See also s 39. Planning permission may be required: see PARA 924 note 5 ante.

UPDATE

924-970 Manufacture and Keeping of Explosives

The provisions of the Explosives Act 1875 and subordinate legislation relating to the manufacture and storage of explosives are largely replaced by the Manufacture and Storage of Explosives Regulations 2005, SI 2005/1082: see PARAS 924A-924E.

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

Halsbury's Laws of England/EXPLOSIVES (VOLUME 17(2) (REISSUE))/2. MANUFACTURE AND KEEPING OF EXPLOSIVES/(1) FACTORIES AND MAGAZINES/(ii) Application for Licence/934. Local authority's assent.

934. Local authority's assent.

The local authority¹, upon application for its assent to the establishment of a new factory or magazine² on the proposed site, must cause notice to be duly published by the applicant of the application and of the time and place at which it will be prepared to hear the applicant and any objectors who have, not less than seven clear days before the hearing, sent to the clerk of the local authority and to the applicant notice of their intention to appear and object, with their names, addresses and occupations, and a short statement of the grounds of objection³. The notice must state that the draft licence and plan, or a correct copy of it, has been deposited for inspection by persons interested at the place and time previously appointed by the authority for the purpose and specified in the notice⁴. Where the site of the proposed factory or magazine is within, or within 1.6 km of, the limits of jurisdiction of any district council⁵ or harbour authority⁶, the applicant must also serve on it, if it is not the local authority, notice of the application and of the time and place of hearing fixed by the local authority⁷. If the site lies within the area of two local authorities, application must be made for the assent of both authorities⁸. The notices must be published and served by the applicant not less than one calendar month before the hearing⁹.

Upon the hearing of the application, or any adjournment, the local authority may dissent altogether from the establishment of such new factory or magazine on the proposed site, or assent to it, either absolutely or on any conditions requiring additional restrictions or precautions¹⁰.

1 As to the appropriate local authority see PARA 921 ante.

2 For the meaning of 'magazine' see PARA 909 note 1 ante.

3 Explosives Act 1875 s 7. As to the method of publication see PARA 923 ante.

4 Order of the Secretary of State dated 20 May 1876. As to the Secretary of State see PARA 913 ante.

5 References in the Explosives Act 1875 to an 'urban sanitary authority' or 'urban sanitary district' must now be taken as referring to a district council or the area administered by such a council: see the Local Government Act 1972 ss 1(1), (10), 251(1), Sch 29 paras 1, 2; and LOCAL GOVERNMENT vol 69 (2009) PARA 5.

6 For the meaning of 'harbour authority' see PARA 921 note 6 ante.

7 Explosives Act 1875 s 7 (amended by the Explosives Act 1875 etc (Metrication and Miscellaneous Amendment) Regulations 1984, SI 1984/510, reg 2, Sch 1). See also the Explosives Act s 39. The local authority must fix the time and place of hearing as soon practicable after the application. The time fixed must be as soon as practicable after the expiration of one calendar month from the publication and service of the notices by the applicant; and the place must be within the jurisdiction of the local authority or within a convenient distance of its limits: s 7.

8 See *ibid* s 7.

9 *Ibid* s 7; Interpretation Act 1978 ss 5, 22, 23, Sch 1, Sch 2 paras 4(1) (as amended), 5(b). See also STATUTES vol 44(1) (Reissue) PARA 1381 et seq.

10 Explosives Act 1875 s 7.

UPDATE

924-970 Manufacture and Keeping of Explosives

The provisions of the Explosives Act 1875 and subordinate legislation relating to the manufacture and storage of explosives are largely replaced by the Manufacture and Storage of Explosives Regulations 2005, SI 2005/1082: see PARAS 924A-924E.

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

Halsbury's Laws of England/EXPLOSIVES (VOLUME 17(2) (REISSUE))/2. MANUFACTURE AND KEEPING OF EXPLOSIVES/(1) FACTORIES AND MAGAZINES/(ii) Application for Licence/935. Hearing of application.

935. Hearing of application.

If on the hearing of the application for the establishment of a factory or magazine¹, the authority assents, the applicant is entitled to the licence² applied for in accordance with the draft approved by the Health and Safety Executive³, with the addition, if the assent was on conditions, of the restrictions and precautions required by those conditions⁴. The costs of any objection which the local authority may deem frivolous are to be ascertained by an order made by it, and constitute a debt due from the objector to the applicant, of which the order is conclusive evidence⁵.

1 For the meaning of 'magazine' see PARA 909 note 1 ante.

2 The land forming the site bounded as described in the licence with every mound, building and work thereon for whatever purpose, is deemed, for the purposes of the Explosives Act 1875, to be the factory or magazine referred to in the licence: s 8.

3 As to the Health and Safety Executive see HEALTH AND SAFETY AT WORK vol 52 (2009) PARAS 361-371.

4 Explosives Act 1875 s 8 (amended by the Explosives Acts 1875 and 1923 etc (Repeals and Modifications) Regulations 1974, SI 1974/1885, regs 2(b), 9, Sch 2 para 3). See also the Explosives Act 1875 s 39. The local authority must give its final decision as soon as practicable after the expiration of one month from the publication and service of the applicant's notices: s 7. As to assent on conditions requiring additional restrictions or precautions see PARA 934 text and note 10 ante.

5 Ibid s 7.

UPDATE

924-970 Manufacture and Keeping of Explosives

The provisions of the Explosives Act 1875 and subordinate legislation relating to the manufacture and storage of explosives are largely replaced by the Manufacture and Storage of Explosives Regulations 2005, SI 2005/1082: see PARAS 924A-924E.

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

Halsbury's Laws of England/EXPLOSIVES (VOLUME 17(2) (REISSUE))/2. MANUFACTURE AND KEEPING OF EXPLOSIVES/(1) FACTORIES AND MAGAZINES/(ii) Application for Licence/936. Appeal.

936. Appeal.

Any person who is aggrieved¹ by a decision of an authority refusing to issue him a licence, or issuing him a licence on or subject to any term, condition or restriction whereby he is aggrieved, may appeal to the Secretary of State². Before the determination of an appeal, the Secretary of State must ask the appellant and the authority concerned whether they wish to appear and be heard on the appeal; the appeal may be determined without a hearing of the parties if both of them express a wish not to appear and be heard, but if either of the parties expresses a wish to appear and be heard the Secretary of State must afford to both of them an opportunity of so doing³. On determination of an appeal, the Secretary of State, or a person who determines an appeal on behalf of the Secretary of State, may give such directions as he considers appropriate to give effect to his determination⁴.

1 For the meaning of 'person aggrieved' see **JUDICIAL REVIEW** vol 61 (2010) PARA 656.

2 Health and Safety at Work etc Act 1974 ss 44(1), 53(1) (both as amended), Sch 1 (see **HEALTH AND SAFETY AT WORK** vol 52 (2009) PARAS 302, 351). See also the Explosives Act 1875 s 8 (as amended: see PARA 933 ante), s 39. As to the Secretary of State see PARA 913 ante. In such cases as he may consider it appropriate, the Secretary of State may direct that the appeal be determined on his behalf by a person appointed by him for that purpose: Health and Safety at Work etc Act 1974 s 44(2).

3 Ibid s 44(3). The Secretary of State (or the person hearing the appeal on his behalf) must give reason for his decision if requested: see s 44(4) (as amended) (see **HEALTH AND SAFETY AT WORK** vol 52 (2009) PARA 351), applying the Tribunals and Inquiries Act 1992 s 10 (as amended).

4 Health and Safety at Work etc Act 1974 s 44(5).

UPDATE

924-970 Manufacture and Keeping of Explosives

The provisions of the Explosives Act 1875 and subordinate legislation relating to the manufacture and storage of explosives are largely replaced by the Manufacture and Storage of Explosives Regulations 2005, SI 2005/1082: see PARAS 924A-924E.

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733.

Halsbury's Laws of England/EXPLOSIVES (VOLUME 17(2) (REISSUE))/2. MANUFACTURE AND KEEPING OF EXPLOSIVES/(1) FACTORIES AND MAGAZINES/(ii) Application for Licence/937. Confirmation.

937. Confirmation.

When satisfied that the factory or magazine¹ is sufficiently completed according to the licence to justify its use, the Health and Safety Executive² must confirm the licence, but until confirmation the licence does not come into force³.

1 For the meaning of 'magazine' see PARA 909 note 1 ante.

2 As to the Health and Safety Executive see HEALTH AND SAFETY AT WORK vol 52 (2009) PARAS 361-371.

3 Explosives Act 1875 s 8 (amended by the Explosives Acts 1875 and 1923 etc (Repeals and Modifications) Regulations 1974, SI 1974/1885, regs 2(b), 9, Sch 1, Sch 2 para 3). See also the Explosives Act s 39. It is not the practice that every building authorised by the licence should be erected before the licence is confirmed. The licence may therefore be drafted so as to cover probable extensions. For the fees in respect of licences see PARA 918 ante.

UPDATE

924-970 Manufacture and Keeping of Explosives

The provisions of the Explosives Act 1875 and subordinate legislation relating to the manufacture and storage of explosives are largely replaced by the Manufacture and Storage of Explosives Regulations 2005, SI 2005/1082: see PARAS 924A-924E.

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

Halsbury's Laws of England/EXPLOSIVES (VOLUME 17(2) (REISSUE))/2. MANUFACTURE AND KEEPING OF EXPLOSIVES/(1) FACTORIES AND MAGAZINES/(iii) Regulation of Factories and Magazines/938. Terms of licence to be observed.

(iii) Regulation of Factories and Magazines

938. Terms of licence to be observed.

The factory or magazine¹, or any part of it, must not be used for any purpose not in accordance with the licence². The terms of the licence must be duly observed, and the manufacture³ or keeping, or any process in or work connected with the manufacture or keeping, of explosives⁴ must not be carried on except in accordance with those terms⁵. The factory or magazine and every part of it must be maintained in accordance with the licence, and no material alteration by enlarging or adding to the site, externally enlarging or adding to any building, altering any mound except by enlargement, or making any new work, may be made except pursuant to an amending licence granted under the Explosives Act 1875⁶.

In the event of any breach, by any act or default, of the foregoing provisions in any factory or magazine, the occupier⁷ is guilty of an offence⁸. The occupier of a factory is not, however, guilty of a breach of the foregoing provisions for using, in an emergency or temporarily, one building or part of a building in which any process of manufacture is, under the terms of the licence, carried on, for another process of manufacture, if he does not carry on in that building, or part of it, more than one process at the same time, and if the quantity of explosive or its ingredients in the building or part does not exceed the quantity allowed to be there or any less quantity allowed to be in the building or part of a building in which such other process is usually carried on; and if upon such use being continued after the lapse of 28 days from its first beginning he notifies an inspector⁹ and the inspector does not require its discontinuance¹⁰.

In every factory and magazine certain general rules must be observed¹¹, and in addition special rules must be made for each factory and magazine to meet the special conditions and risks attending the particular manufacture¹².

1 For the meaning of 'magazine' see PARA 909 note 1 ante.

2 Explosives Act 1875 s 9(1). See also s 39.

3 For the meaning of 'manufacture' see PARA 925 ante.

4 For the meaning of 'explosive' see PARA 905 ante.

5 Explosives Act 1875 s 9(2). See also s 39.

6 Ibid s 9(3). See also s 39. As to amending licences see PARA 943 post.

7 For the meaning of 'occupier' see PARA 926 note 1 ante.

8 Explosives Act 1875 s 9 (amended by the Explosives Acts 1875 and 1923 etc (Repeals and Modifications) Regulations 1974, SI 1974/1885, regs 2(b), 9, Sch 2 para 4). See also the Explosives Act 1875 s 39. As to the penalties for such an offence see PARA 1017 post.

9 I.e. an inspector appointed by the Health and Safety Executive: see PARA 914 ante. As to the Health and Safety Executive see HEALTH AND SAFETY AT WORK vol 52 (2009) PARAS 361-371.

10 Explosives Act 1875 s 9. See also s 39. If the occupier desires to continue to use a building, or to use it frequently, for a purpose other than that covered by the licence, an amending licence should be applied for under the Explosives Act 1875 s 12: see PARA 943 post.

11 See PARAS 939-941 post.

12 See PARA 942 post.

UPDATE

924-970 Manufacture and Keeping of Explosives

The provisions of the Explosives Act 1875 and subordinate legislation relating to the manufacture and storage of explosives are largely replaced by the Manufacture and Storage of Explosives Regulations 2005, SI 2005/1082: see PARAS 924A-924E.

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

Halsbury's Laws of England/EXPLOSIVES (VOLUME 17(2) (REISSUE))/2. MANUFACTURE AND KEEPING OF EXPLOSIVES/(1) FACTORIES AND MAGAZINES/(iii) Regulation of Factories and Magazines/939. General rules for gunpowder.

939. General rules for gunpowder.

General rules for gunpowder factories and gunpowder magazines (other than floating magazines)¹ are contained in the Explosives Act 1875².

In a factory every factory magazine³, and in any other magazine every building in which gunpowder is kept, is to be used only for the keeping of gunpowder, and receptacles and tools connected with its keeping⁴. The interior of every danger building⁵ and the benches, shelves and fittings (other than machinery) in such a building must be so constructed, lined or covered as to prevent the exposure of any iron or steel and the detaching of any grit, iron, steel or similar substance, in such a way as to come into contact with the gunpowder or its ingredients⁶. The interior, benches, shelves and fittings must, as far as practicable, be kept free from grit and otherwise clean⁷. Every factory magazine and expense magazine in a factory, and every danger building in a magazine, must have attached a sufficient lightning conductor, unless, by reason of the construction by excavation or the position of such magazine or building, or otherwise, the Health and Safety Executive considers a conductor unnecessary, and every danger building in a factory must, if so required by the Health and Safety Executive, have attached a sufficient lightning conductor⁸. Charcoal, oiled cotton, oiled rags, oiled waste and articles liable to spontaneous ignition may only be taken into a danger building for immediate supply or use, and on the cessation of that use must be removed forthwith⁹.

All gunpowder and ingredients must, so far as practicable, be removed before repairs are done to any part of a danger building¹⁰; and tools used in repairs to or in such a building must be of specified materials or covered with some safe and suitable material¹¹. A notice must be affixed to every danger building, either outside or inside and in such manner as to be easily read, showing the permitted quantity of gunpowder or ingredients allowed to be in the building, together with a copy of the general rules¹² and such part of the licence and the special rules¹³ as apply to the building, with the addition, in a factory, of the name of the building, or words indicating the purpose for which it is used¹⁴.

Precautions must be taken, by the use of clothing without pockets, suitable shoes, searching and otherwise, to prevent the introduction into a danger building of fire, lucifer matches or any substances or articles likely to cause explosion or fire, or the introduction of any iron, steel or grit into any part of a danger building, where it would be likely to come into contact with the gunpowder or its ingredients¹⁵. Smoking is prohibited except in such parts of the factory or magazine as may be allowed under the special rules¹⁶. Any carriage, boat or other receptacle in which the gunpowder or its ingredients are conveyed within and outside the factory or magazine must be constructed without any exposed iron or steel in the interior and must contain only the gunpowder and ingredients¹⁷. It must be closed or otherwise properly covered over, and must be conveyed with all due diligence and with such precautions and in such manner as will sufficiently guard against any accidental ignition¹⁸. Ingredients in course of manufacture into gunpowder must be removed with all due diligence from each working building as soon as the process connected with these ingredients is completed; and finished gunpowder must likewise be removed to a factory magazine or sent away immediately from the factory, and must be loaded and unloaded with all due diligence¹⁹. All ingredients to be made or mixed into gunpowder must be carefully sifted so that, so far as practicable, all dangerous foreign matter is removed²⁰.

A person under the age of 18 must not work in or enter a danger building except in the presence and under the supervision of a person over the age of 21²¹, and a person under the

age of 16 cannot be employed in any such building except at a process which has been declared by an order of the Secretary of State to be a process which is not in itself dangerous²² and except in the presence and supervision of a person over the age of 21²³.

1 For the meaning of 'magazine' see PARA 909 note 1 ante. As to floating magazines see PARA 940 note 5 post.

2 See the Explosives Act 1875 s 10 (as amended); and text and notes 3-23 infra. As to the consequence of any breach of the general rules, and as to additional general precautions to be taken see PARA 941 post.

3 'Factory magazine' means a building for keeping the finished explosive made in the factory and includes, if that explosive is not gunpowder, any building for keeping the partly manufactured explosive or its ingredients mentioned in that behalf in the licence: *ibid* s 108.

4 *Ibid* s 10(1).

5 'Danger building' means a building in which any process of the manufacture of gunpowder is carried on or in which gunpowder, or any of its ingredients, either mixed or partially mixed, are kept or are liable to be kept in the course of manufacture: *ibid* s 10(2).

6 *Ibid* s 10(2).

7 *Ibid* s 10(2).

8 *Ibid* s 10(3) (amended by the Explosives Acts 1875 and 1923 etc (Repeals and Modifications) Regulations 1974, SI 1974/1885, regs 2(b), 9, Sch 2 para 3). As to the Health and Safety Executive see HEALTH AND SAFETY AT WORK vol 52 (2009) PARAS 361-371. The term 'expense magazine' is not defined.

9 Explosives Act 1875 s 10(4).

10 See *ibid* s 10(5).

11 *Ibid* s 10(7).

12 The Health and Safety Executive may require any other provisions of the Explosives Act 1875 to be affixed: s 10(6) (amended by the Explosives Acts 1875 and 1923 etc (Repeals and Modifications) Regulations 1974, SI 1974/1885, regs 2(b), 9, Sch 2 para 3).

13 As to the special rules see PARA 942 post.

14 Explosives Act 1875 s 10(6).

15 *Ibid* s 10(8). This does not prevent the introduction of an artificial light of such construction, position or character as not to cause any danger of fire or explosion: s 10(8).

16 *Ibid* s 10(9).

17 *Ibid* s 10(10).

18 *Ibid* s 10(10).

19 *Ibid* s 10(12).

20 *Ibid* s 10(13).

21 *Ibid* s 10(11) (substituted by the Explosives Act 1923 s 2).

22 As to processes which have been declared by an order made by the Secretary of State not to be in themselves dangerous see Order of the Secretary of State (No 10), SR & O 1924/55. For other restrictions on the employment of children and young persons see CHILDREN AND YOUNG PERSONS vol 5(4) (2008 Reissue) PARA 743 et seq; HEALTH AND SAFETY AT WORK vol 52 (2009) PARA 454. As to the Secretary of State see PARA 913 ante.

23 Explosives Act 1875 s 10(11) (as substituted: see note 21 supra).

UPDATE

924-970 Manufacture and Keeping of Explosives

The provisions of the Explosives Act 1875 and subordinate legislation relating to the manufacture and storage of explosives are largely replaced by the Manufacture and Storage of Explosives Regulations 2005, SI 2005/1082: see PARAS 924A-924E.

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

Halsbury's Laws of England/EXPLOSIVES (VOLUME 17(2) (REISSUE))/2. MANUFACTURE AND KEEPING OF EXPLOSIVES/(1) FACTORIES AND MAGAZINES/(iii) Regulation of Factories and Magazines/940. General rules for other explosives, and for floating magazines.

940. General rules for other explosives, and for floating magazines.

The general rules for factories and magazines (except floating magazines) for explosives other than gunpowder are contained in Orders in Council¹. The Orders in Council applicable respectively to factories and magazines for explosives other than gunpowder contain the same requirements, *mutatis mutandis*, as are summarised in the preceding paragraph in the case of gunpowder factories and magazines, except that in the case of the conveyance within a factory or magazine or the keeping within a magazine of explosive of the first division of the ammunition class it is not necessary to prevent it coming into contact with iron and steel.

In regard to the employment of young persons under the age of 16 in factories for explosives other than gunpowder, the Secretary of State² has prescribed certain processes to be not in themselves dangerous³. In magazines for explosives other than gunpowder there is a general rule against the presence of fire, lights and matches anywhere in the magazine, except as allowed by the licence or special rules⁴.

The general rules for floating magazines are contained in orders of the Secretary of State⁵.

1 See the Explosives Act 1875 s 40(2); Order in Council (No 2) dated 27 November 1875 (amended by SR & O 1923/926), relating to factories for explosives other than gunpowder; Order in Council (No 3) dated 27 November 1875, Pt I (amended by SR & O 1923/1298; SI 1974/1885), relating to magazines for explosives other than gunpowder, whether with or without gunpowder. As to the consequences of any breach of the general rules, and as to additional general precautions to be taken see PARA 941 post. For the meaning of 'magazine' see PARA 909 note 1 ante. For the meaning of 'explosive' see PARA 905 ante.

2 As to the Secretary of State see PARA 913 ante.

3 See Order of the Secretary of State (No 10), SR & O 1924/55.

4 See Order in Council (No 3) dated 27 November 1875 Pt I r 8. As to the special rules see PARA 942 post.

5 See the Explosives Act 1875 s 10; Order of the Secretary of State (No 1) dated November 1875 (amended by SI 1974/1885), applying general rules to floating magazines for gunpowder; the Order of the Secretary of State (No 2) dated November 1875 (amended by SR & O 1923/926; SI 1974/1885), applying general rules to floating magazines for explosives other than gunpowder, whether with or without gunpowder. These rules are similar to those for magazines on land. Any cabin, hold or part of the vessel where explosive is liable to be is treated as a danger building. Special provision is made for the presence of coal and fuel. Precautions are prescribed for loading and unloading. Young persons under 16 may only be employed in or enter a danger building of a gunpowder floating magazine in the presence of and supervised by an adult, but in a danger building of other floating magazines they may not be employed and persons under 18 may only be employed or allowed to enter in the presence of and under supervision of an adult. For the meaning of 'danger building' see PARA 939 note 5 ante.

UPDATE

924-970 Manufacture and Keeping of Explosives

The provisions of the Explosives Act 1875 and subordinate legislation relating to the manufacture and storage of explosives are largely replaced by the Manufacture and Storage of Explosives Regulations 2005, SI 2005/1082: see PARAS 924A-924E.

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

Halsbury's Laws of England/EXPLOSIVES (VOLUME 17(2) (REISSUE))/2. MANUFACTURE AND KEEPING OF EXPLOSIVES/(1) FACTORIES AND MAGAZINES/(iii) Regulation of Factories and Magazines/941. Additional precautions; offences.

941. Additional precautions; offences.

It is the duty of the occupier¹ of a factory or magazine² and of every person employed there to take all due precautions to prevent accidents by fire or explosion and to prevent unauthorised persons having access to the factory, magazine or store³ or to the explosives⁴ in it, and to abstain from any act tending to cause fire or explosion which is not reasonably necessary for the purpose of work⁵. Any breach, by any act or default, of such duty is deemed to be a breach of the general rules⁶.

Where the Secretary of State⁷ is satisfied that special circumstances require special precautions⁸ for the prevention of accidents by fire or explosion, or the prevention of unauthorised access, to be taken, he may by order prescribe those special precautions⁹; and, if the order is not complied with, he may cause steps to be taken to secure compliance and recover the cost from the occupier¹⁰.

In the event of any breach, by any act or default, of the general rules in any factory or magazine, the occupier is guilty of an offence¹¹.

The occupier of a licensed factory or a licensed magazine must appoint one individual to be responsible to him for ensuring, in respect of that licensed factory or licensed magazine, that adequate precautions are taken to secure explosives against loss¹².

1 For the meaning of 'occupier' see PARA 926 note 1 ante.

2 For the meaning of 'magazine' see PARA 909 note 1 ante.

3 For the meaning of 'store' see PARA 909 note 2 ante.

4 For the meaning of 'explosive' see PARA 905 ante.

5 Explosives Act 1875 s 23. See also s 39.

6 Ibid s 23. See also s 39.

7 As to the Secretary of State see PARA 913 ante.

8 Ie under the Explosives Act 1875 s 23.

9 Explosives Act 1923 s 1(1). Any contravention of, or failure to comply with, the terms of any such order is a breach of the Explosives Act 1875 s 23: Explosives Act 1923 s 1(1).

10 Ibid s 1(2).

11 Explosives Act 1875 s 10 (amended by the Explosives Acts 1875 and 1923 etc (Repeals and Modifications) Regulations 1974, SI 1974/1885, regs 2(b), 9, Sch 2 para 6). See also the Explosives Act 1875 s 39. As to the penalties for such an offence see PARA 1017 post.

12 Control of Explosives Regulations 1991, SI 1991/1531, reg 11. The Health and Safety Executive is the enforcing authority: reg 15(3)(a). For the meaning of 'explosive' in those regulations see PARA 931 note 1 ante. As to the Health and Safety Executive see HEALTH AND SAFETY AT WORK VOL 52 (2009) PARAS 361-371. See also reg 13(8); and PARA 1046 post.

UPDATE

924-970 Manufacture and Keeping of Explosives

The provisions of the Explosives Act 1875 and subordinate legislation relating to the manufacture and storage of explosives are largely replaced by the Manufacture and Storage of Explosives Regulations 2005, SI 2005/1082: see PARAS 924A-924E.

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

941 Additional precautions; offences

TEXT AND NOTES 1-6--Replaced. The occupier of every premises at which gunpowder is manufactured or stored must take all due precaution for preventing unauthorised persons having access to the premises or to the gunpowder therein: 1875 Act s 23(1) (s 23 substituted by SI 2005/1082). 'Premises' includes any place and, in particular, includes (1) any vehicle, vessel, aircraft or hovercraft; (2) any installation on land (including the foreshore and other land intermittently covered by water), any offshore installation, and any other installation (whether floating, or resting on the seabed or the subsoil thereof, or resting on other land covered with water or the subsoil thereof); and (3) any tent or movable structure: Health and Safety at Work etc Act 1974 s 53 (applied by the 1875 Act s 23(3)). In the event of any breach (by any act or default) of s 23(1), the occupier is guilty of an offence: s 23(2).

TEXT AND NOTES 7-10--1923 Act repealed: SI 2005/1082.

TEXT AND NOTE 12--Any person who occupies a site and who has a licence for the manufacture or storage of explosives at that site must appoint one individual to be responsible to him for ensuring that adequate precautions are taken at that site to secure explosives against loss: see SI 1991/1531 reg 11 (substituted by SI 2005/1082).

Halsbury's Laws of England/EXPLOSIVES (VOLUME 17(2) (REISSUE))/2. MANUFACTURE AND KEEPING OF EXPLOSIVES/(1) FACTORIES AND MAGAZINES/(iii) Regulation of Factories and Magazines/942. Special rules.

942. Special rules.

Every occupier¹ of a factory or magazine² must, with the sanction of the Health and Safety Executive³, make special rules for the regulation of persons managing or employed in or about the establishment to secure the observance of the statutory provisions⁴, and the safety and proper discipline of such persons, and the safety of the public⁵. The occupier may, and if required by the Health and Safety Executive must, with such sanction, repeal, alter or add to the special rules⁶. If an occupier, upon being required so to act, fails to comply with the requisition within three months, the Health and Safety Executive may itself make, repeal, alter or add to the special rules⁷. A person who contravenes any such special rule is guilty of an offence⁸.

1 For the meaning of 'occupier' see PARA 926 note 1 ante.

2 For the meaning of 'magazine' see PARA 909 note 1 ante.

3 As to the Health and Safety Executive see HEALTH AND SAFETY AT WORK vol 52 (2009) PARAS 361-371.

4 I.e. the Explosives Act 1875 and any statutory orders made under that Act: see PARA 903 ante. As to the scope of the term 'statutory order' see PARA 903 ante.

5 Ibid s 11 (amended by the Explosives Acts 1875 and 1923 etc (Repeals and Modifications) Regulations 1974, SI 1974/1885, regs 2(b), 9, Sch 2 para 3). See also the Explosives Act 1875 s 39.

6 Ibid s 11 (as amended: see note 5 supra). See also s 39.

7 Ibid s 11 (as amended: see note 5 supra). See also s 39.

8 Ibid s 11 (amended by the Explosives Acts 1875 and 1923 etc (Repeals and Modifications) Regulations 1974, Sch 2 para 7). As to the penalties for such an offence see PARA 1017 post. A coal miner who suddenly gave up his employment remained subject to such special rules whilst still in the mine: *Higham v Wright* (1877) 2 CPD 397.

UPDATE

924-970 Manufacture and Keeping of Explosives

The provisions of the Explosives Act 1875 and subordinate legislation relating to the manufacture and storage of explosives are largely replaced by the Manufacture and Storage of Explosives Regulations 2005, SI 2005/1082: see PARAS 924A-924E.

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

Halsbury's Laws of England/EXPLOSIVES (VOLUME 17(2) (REISSUE))/2. MANUFACTURE AND KEEPING OF EXPLOSIVES/(1) FACTORIES AND MAGAZINES/(iv) Alteration, Devolution and Determination of Licences/943. Alteration of licence.

(iv) Alteration, Devolution and Determination of Licences

943. Alteration of licence.

If the occupier¹ of a factory or magazine² desires an alteration in the terms of his licence, or any material alteration in the premises by enlarging or adding to the site or by externally enlarging or adding to any building, or by altering any mound otherwise than by enlargement, or by making any new work, he may apply for an amending licence³. The procedure is the same as upon application for an original licence⁴, except that in certain cases⁵ the Health and Safety Executive may grant the amending licence without the assent of the local authority⁶.

1 For the meaning of 'occupier' see PARA 926 note 1 ante.

2 For the meaning of 'magazine' see PARA 909 note 1 ante.

3 Explosives Act 1875 s 12. See also s 39.

4 See PARA 933 et seq ante.

5 These are (1) where the factory or magazine is covered by a continuing certificate (see Explosives Act 1875 ss 14, 39; and PARA 928 ante); (2) where the Health and Safety Executive is satisfied that the alteration desired may be properly permitted, having regard to the safety of the employees, and will neither materially increase the danger to the public from fire or explosion nor materially reduce the distance of any danger building in the factory or magazine from any building or work outside and in the neighbourhood, nor materially increase the amount of explosive allowed to be kept in the factory, magazine or any building in the magazine (s 12 (amended by the Explosives Acts 1875 and 1923 etc (Repeals and Modifications) Regulations 1974, SI 1974/1885, regs 2(b), 9, Sch 2 para 3); and see also the Explosives Act 1875 s 39). As to the Health and Safety Executive see HEALTH AND SAFETY AT WORK vol 52 (2009) PARAS 361-371. For the meaning of 'danger building' see PARA 939 note 5 ante. For the meaning of 'explosive' see PARA 905 ante.

6 Ibid s 12 (as amended: see note 5 supra).

UPDATE

924-970 Manufacture and Keeping of Explosives

The provisions of the Explosives Act 1875 and subordinate legislation relating to the manufacture and storage of explosives are largely replaced by the Manufacture and Storage of Explosives Regulations 2005, SI 2005/1082: see PARAS 924A-924E.

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

Halsbury's Laws of England/EXPLOSIVES (VOLUME 17(2) (REISSUE))/2. MANUFACTURE AND KEEPING OF EXPLOSIVES/(1) FACTORIES AND MAGAZINES/(iv) Alteration, Devolution and Determination of Licences/944. Change of occupancy.

944. Change of occupancy.

A factory or magazine¹ licence attaches to the place and is not personal to the occupier². It is not avoided by a change of occupier, but notice of the name, address and calling of the new occupier must, within three months of the change, be sent to the Health and Safety Executive³ and in default the new occupier is guilty of an offence⁴.

1 For the meaning of 'magazine' see PARA 909 note 1 ante.

2 For the meaning of 'occupier' see PARA 926 note 1 ante.

3 As to the Health and Safety Executive see HEALTH AND SAFETY AT WORK vol 52 (2009) PARAS 361-371.

4 Explosives Act 1875 s 13 (amended by the Explosives Acts 1875 and 1923 etc (Repeals and Modifications) Regulations 1974, SI 1974/1885, regs 2(b), 9, Sch 2 paras 3, 8). See also the Explosives Act 1875 s 39. As to the penalties for such an offence see PARA 1017 post. As to giving notice see PARA 919 ante.

UPDATE

924-970 Manufacture and Keeping of Explosives

The provisions of the Explosives Act 1875 and subordinate legislation relating to the manufacture and storage of explosives are largely replaced by the Manufacture and Storage of Explosives Regulations 2005, SI 2005/1082: see PARAS 924A-924E.

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

Halsbury's Laws of England/EXPLOSIVES (VOLUME 17(2) (REISSUE))/2. MANUFACTURE AND KEEPING OF EXPLOSIVES/(1) FACTORIES AND MAGAZINES/(iv) Alteration, Devolution and Determination of Licences/945. Determination of licence.

945. Determination of licence.

A factory or magazine¹ licence is determined by a discontinuance for a period of two years or more of the business carried on in pursuance of the licence, or by the use of the premises for any purpose not authorised by it². If, however, the occupier³ sends to the Health and Safety Executive⁴, and publishes, as directed by it⁵, a notice to the effect that the right to the factory or magazine licence is not intended to be surrendered, the licence will not be determined until after the expiration of five years from the first discontinuance of the business, whether or not the premises have been used for any unauthorised purpose⁶.

1 For the meaning of 'magazine' see PARA 909 note 1 ante.

2 Explosives Act 1875 s 13. See also s 39.

3 For the meaning of 'occupier' see PARA 926 note 1 ante.

4 As to the Health and Safety Executive see HEALTH AND SAFETY AT WORK vol 52 (2009) PARAS 361-371.

5 The practice is to require the notice to be inserted in a local newspaper, a copy of which should be sent to the Health and Safety Executive.

6 Explosives Act 1875 s 13 (amended by the Explosives Acts 1875 and 1923 etc (Repeals and Modifications) Regulations 1974, SI 1974/1885, regs 2(b), 9, Sch 2 para 3). See also the Explosives Act 1875 s 39.

UPDATE

924-970 Manufacture and Keeping of Explosives

The provisions of the Explosives Act 1875 and subordinate legislation relating to the manufacture and storage of explosives are largely replaced by the Manufacture and Storage of Explosives Regulations 2005, SI 2005/1082: see PARAS 924A-924E.

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

Halsbury's Laws of England/EXPLOSIVES (VOLUME 17(2) (REISSUE))/2. MANUFACTURE AND KEEPING OF EXPLOSIVES/(1) FACTORIES AND MAGAZINES/(v) Reconstruction/946.
Reconstruction after accident.

(v) Reconstruction

946. Reconstruction after accident.

Where an accident by explosion or fire has occurred in, and wholly or partly destroyed, a factory magazine¹ or any magazine or store², it must not be reconstructed and no further supply of explosive³ may be put in it except with the permission of the Health and Safety Executive⁴. However, a factory magazine in a factory covered by a continuing certificate⁵ may be reconstructed upon such site in the factory and with such precautions as the Health and Safety Executive may deem reasonable, having regard to the working of the factory and to the safety of the public and employees⁶. Where any building in a factory has been wholly or partly destroyed by an accident by explosion or fire and an inspector⁷ had previously notified the occupier⁸ that the building was unduly near to some building or work outside the factory, reconstruction may take place only upon such site in the factory and with such precautions as the Health and Safety Executive deems reasonable having regard to the working of the factory and the safety of the public and employees⁹.

Where two or more buildings in a factory have been wholly or partly destroyed by an accident by explosion or fire, not more than one may be reconstructed except with the permission of the Health and Safety Executive, although this provision does not apply to incorporating mills in a factory under a continuing certificate or to other buildings in such a factory if an inspector has not previously notified the occupier that the buildings were unduly near to each other¹⁰.

1 For the meaning of 'factory magazine' see PARA 939 note 3 ante.

2 For the meaning of 'magazine' see PARA 909 note 1 ante; and for the meaning of 'store' see PARA 909 note 2 ante.

3 For the meaning of 'explosive' see PARA 905 ante.

4 Explosives Act 1875 s 64 (amended by the Explosives Acts 1875 and 1923 etc (Repeals and Modifications) Regulations 1974, SI 1974/1885, regs 2(b), 9, Sch 2 para 3). An explosive put in a building in contravention of this provision is deemed to be kept in an unauthorised place, and the offence may be punished accordingly: Explosives Act 1875 s 64. See also PARA 927 ante. As to the Health and Safety Executive see HEALTH AND SAFETY AT WORK vol 52 (2009) PARAS 361-371.

5 As to continuing certificates see PARA 928 ante.

6 Explosives Act 1875 s 64 (as amended: see note 4 supra).

7 I.e. an inspector appointed by the Health and Safety Executive: see PARA 914 ante.

8 For the meaning of 'occupier' see PARA 926 note 1 ante.

9 Explosives Act 1875 s 64 (as amended: see note 4 supra).

10 Ibid s 64 (as amended: see note 4 supra).

UPDATE

924-970 Manufacture and Keeping of Explosives

The provisions of the Explosives Act 1875 and subordinate legislation relating to the manufacture and storage of explosives are largely replaced by the Manufacture and Storage of Explosives Regulations 2005, SI 2005/1082: see PARAS 924A-924E.

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

Halsbury's Laws of England/EXPLOSIVES (VOLUME 17(2) (REISSUE))/2. MANUFACTURE AND KEEPING OF EXPLOSIVES/(1) FACTORIES AND MAGAZINES/(v) Reconstruction/947.
Reconstruction on a different site.

947. Reconstruction on a different site.

Where, after an accident by explosion or fire, a building is lawfully reconstructed on a different site¹, the Health and Safety Executive² must make the necessary alterations in the licence, and such alterations are deemed to be part of the licence³.

1 See PARA 946 ante.

2 As to the Health and Safety Executive see HEALTH AND SAFETY AT WORK vol 52 (2009) PARAS 361-371.

3 Explosives Act 1875 s 64 (amended by the Explosives Acts 1875 and 1923 etc (Repeals and Modifications) Regulations 1974, SI 1974/1885, regs 2(b), 9, Sch 2 para 3). The reconstruction of a building in contravention of the Explosives Act 1875 s 64 is deemed to be a breach of the terms of the licence and is punishable accordingly: s 64. See PARA 938 ante.

UPDATE

924-970 Manufacture and Keeping of Explosives

The provisions of the Explosives Act 1875 and subordinate legislation relating to the manufacture and storage of explosives are largely replaced by the Manufacture and Storage of Explosives Regulations 2005, SI 2005/1082: see PARAS 924A-924E.

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

Halsbury's Laws of England/EXPLOSIVES (VOLUME 17(2) (REISSUE))/2. MANUFACTURE AND KEEPING OF EXPLOSIVES/(1) FACTORIES AND MAGAZINES/(vi) Magazines provided by Local Authorities/948. Local authority magazines.

(vi) Magazines provided by Local Authorities

948. Local authority magazines.

Where any local authority¹ under the Explosives Act 1875 satisfies the Health and Safety Executive² that the erection of a magazine³ by the authority, either within or outside its jurisdiction, for the keeping of any explosive⁴ would be conducive to the safety of the public within its jurisdiction, and would not be injurious to any harbour⁵ or district⁶ out of its jurisdiction, the Health and Safety Executive may grant a licence for the magazine⁷.

1 As to the local authorities for the purposes of the Explosives Act 1875 see PARA 921 ante.

2 As to the Health and Safety Executive see HEALTH AND SAFETY AT WORK vol 52 (2009) PARAS 361-371.

3 For the meaning of 'magazine' see PARA 909 note 1 ante.

4 For the meaning of 'explosive' see PARA 905 ante.

5 For the meaning of 'harbour' see PARA 921 note 5 ante.

6 See PARA 934 note 5 ante.

7 Explosives Act 1875 s 72 (amended by the Explosives Acts 1875 and 1923 etc (Repeals and Modifications) Regulations 1974, SI 1974/1885, regs 2(b), 9, Sch 2 para 3; and the Statute Law (Repeals) Act 1993).

UPDATE

924-970 Manufacture and Keeping of Explosives

The provisions of the Explosives Act 1875 and subordinate legislation relating to the manufacture and storage of explosives are largely replaced by the Manufacture and Storage of Explosives Regulations 2005, SI 2005/1082: see PARAS 924A-924E.

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

Halsbury's Laws of England/EXPLOSIVES (VOLUME 17(2) (REISSUE))/2. MANUFACTURE AND KEEPING OF EXPLOSIVES/(1) FACTORIES AND MAGAZINES/(vi) Magazines provided by Local Authorities/949. Local authorities' powers.

949. Local authorities' powers.

For the purpose of the licence¹, a local authority may acquire or build a magazine², and may maintain and manage it³. For the use of the magazine, the local authority may charge such reasonable sums as it may from time to time fix with the approval of the Health and Safety Executive⁴. In relation only to London and to harbour authorities⁵ for the purpose of the licence any local authority may acquire land or rights over land, or appropriate any land or right belonging to the authority, and may borrow for the purpose of acquiring the land or of acquiring or building the magazine⁶.

1 le a licence granted under the Explosives Act 1875 s 72 (as amended): see PARA 948 ante.

2 For the meaning of 'magazine' see PARA 909 note 1 ante.

3 Explosives Act 1875 s 72 (amended by the Local Government Act 1933 s 307, Sch 11; and the London Government Act 1939 s 207, Sch 8).

4 Explosives Act 1875 s 72 (amended by the Explosives Acts 1875 and 1923 etc (Repeals and Modifications) Regulations 1974, SI 1974/1885, regs 2(b), 9, Sch 2 para 3). As to the Health and Safety Executive see HEALTH AND SAFETY AT WORK vol 52 (2009) PARAS 361-371. In the case of a harbour authority (defined in PARA 921 note 6 ante) or the City of London, sums received are to be applied in aid of local rates, and expenses incurred may be defrayed out of local rates: Explosives Act 1875 s 72 (as amended: see note 3 supra). For the meaning of 'local rate' see PARA 923 note 1 ante.

5 As to harbour authorities and the City of London see the Explosives Act 1875 s 72; and note 4 supra. As to county councils and London borough councils see the Local Government Act 1972 ss 120, 122 (as amended); and LOCAL GOVERNMENT vol 69 (2009) PARAS 24, 26. As to acquisition of land by agreement under statutory powers see generally COMPULSORY ACQUISITION OF LAND vol 18 (2009) PARA 550 et seq.

6 See the Explosives Act 1875 s 72 (as amended: see note 3 supra).

UPDATE

924-970 Manufacture and Keeping of Explosives

The provisions of the Explosives Act 1875 and subordinate legislation relating to the manufacture and storage of explosives are largely replaced by the Manufacture and Storage of Explosives Regulations 2005, SI 2005/1082: see PARAS 924A-924E.

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

Halsbury's Laws of England/EXPLOSIVES (VOLUME 17(2) (REISSUE))/2. MANUFACTURE AND KEEPING OF EXPLOSIVES/(1) FACTORIES AND MAGAZINES/(vi) Magazines provided by Local Authorities/950. Magazines outside the jurisdiction of the erecting local authority.

950. Magazines outside the jurisdiction of the erecting local authority.

Where the magazine¹ is outside the jurisdiction of the local authority² erecting it, the assent of the local authority within whose jurisdiction it is situated has to be sought in the usual way³; and where the magazine is within the jurisdiction of the local authority erecting it, notice of the application to the Health and Safety Executive⁴ must be given in the same way as notice of the intention to apply⁵ for the assent of the local authority is required to be given in the case of an ordinary magazine⁶.

1 For the meaning of 'magazine' see PARA 909 note 1 ante.

2 As to the local authorities for the purposes of the Explosives Act 1875 see PARA 921 ante.

3 Ie under the Explosives Act 1875 s 7 (as amended): see PARA 934 ante.

4 As to the Health and Safety Executive see HEALTH AND SAFETY AT WORK vol 52 (2007) PARAS 361-371.

5 Ie under the Explosives Act 1875 s 7 (as amended): see PARA 934 ante.

6 Ibid s 72 (amended by the Explosives Acts 1875 and 1923 etc (Repeals and Modifications) Regulations 1974, SI 1974/1885, regs 2(b), 9, Sch 2 para 3). As to the prosecution of offences in relation to these magazines see PARA 1031 note 3 post.

UPDATE

924-970 Manufacture and Keeping of Explosives

The provisions of the Explosives Act 1875 and subordinate legislation relating to the manufacture and storage of explosives are largely replaced by the Manufacture and Storage of Explosives Regulations 2005, SI 2005/1082: see PARAS 924A-924E.

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

Halsbury's Laws of England/EXPLOSIVES (VOLUME 17(2) (REISSUE))/2. MANUFACTURE AND KEEPING OF EXPLOSIVES/(1) FACTORIES AND MAGAZINES/(vii) Manufacture of Fireworks/951. Dangerous fireworks.

(vii) Manufacture of Fireworks

951. Dangerous fireworks.

If the Secretary of State¹ is of the opinion that in any factory fireworks are being manufactured which would be dangerous when in the possession of the public², and considers that, before determining the licence of the factory³, a notice should be served on the occupier⁴ of the factory, he must give the occupier a statement setting out his opinion and the facts on which his opinion is based⁵. The occupier must be afforded a reasonable opportunity of making representations as to the accuracy of those facts⁶. If after considering any such representations the Secretary of State remains of the opinion that the fireworks are dangerous, he may at any time more than 14 days after giving the statement serve notice on the occupier stating that any licence⁷ in respect of the factory will be determined seven days after service and requiring it to be delivered up for cancellation⁸. Failure to deliver up the licence renders the occupier liable on summary conviction to a fine⁹. Where a factory becomes an unauthorised place in consequence of the determination of the licence, no proceedings¹⁰ may be taken in respect of the keeping of the fireworks in the factory if they are retained there temporarily in pursuance of a requirement of an inspector¹¹.

Where a factory is licensed for the manufacture of explosives other than fireworks, the Secretary of State, instead of serving a notice stating that on the expiration of seven days the licence is to be determined and is to be delivered up for cancellation¹², may serve a notice stating that on the expiration of the like period it is to be a term of the licence¹³ that no fireworks are to be manufactured, and requiring the licence to be delivered up for amendment¹⁴; on the expiration of that period, whether the licence has been delivered up or not, it becomes a term of the licence for all purposes that no fireworks are to be manufactured in the factory¹⁵. Any term imposed under this provision is to be included in the terms which may¹⁶ be amended¹⁷.

1 As to the Secretary of State see PARA 913 ante.

2 In deciding whether any fireworks would be dangerous when in the possession of the public, it must be assumed that they would be handled and used with a reasonable standard of care: Fireworks Act 1951 s 3. For safety regulations concerning the supply of fireworks see the Fireworks (Safety) Regulations 1997, SI 1997/2294; and SALE OF GOODS AND SUPPLY OF SERVICES VOL 41 (2005 Reissue) PARA 604 et seq.

3 I.e. a factory licensed under the Explosives Act 1875: Fireworks Act 1951 s 9. 'Licence' in this context includes the continuing certificate applicable in the case of a factory already in use in 1875: see s 2(6); and PARA 928 note 1 ante.

4 'Occupier' has the same meaning as in the Explosives Act 1875 (see PARA 926 note 1): Fireworks Act 1951 s 9.

5 Ibid s 2(1).

6 Ibid s 2(1).

7 I.e. under the Explosives Act 1875.

8 Fireworks Act 1951 s 2(2). The period of seven days begins with the date of service of the notice: s 2(2)(a). The licence is determined for all purposes at the end of the seven days, whether or not it is delivered up, but without prejudice to the grant of a new licence: s 2(3).

9 Ibid s 2(5) (amended by virtue of the Criminal Justice Act 1982 ss 38, 46). The maximum fine for this offence is level 1 on the standard scale: Fireworks Act 1951 s 2(5) (as so amended).

'Standard scale' means the standard scale of maximum fines for summary offences as set out in the Criminal Justice Act 1982 s 37 (as amended): see the Interpretation Act 1978 s 5, Sch 1 (definition added by the Criminal Justice Act 1988 s 170(1), Sch 15 para 58); and SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 142. At the date at which this volume states the law, level 1 on the standard scale is £200: Criminal Justice Act 1982 s 37(2) (substituted by the Criminal Justice Act 1991 s 17(1)). As to the determination of the amount of the fine actually imposed, as distinct from the level on the standard scale which it may not exceed, see the Criminal Justice Act 1991 s 18 (substituted by the Criminal Justice Act 1993 s 65; and amended by the Criminal Justice and Public Order Act 1994 s 168(1), Sch 9 para 42); and SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 144.

10 Ie under the Explosives Act 1875 s 5 (as amended): see PARA 927 ante.

11 Fireworks Act 1951 s 2(3) proviso (amended by the Explosives Acts 1875 and 1923 etc (Repeals and Modifications) Regulations 1974, SI 1974/1885, reg 6(b)). As to such a requirement see the Fireworks Act 1951 s 1(1) (as amended); and PARA 1030 post.

12 See the text to note 8 supra.

13 See note 3 supra.

14 As to the penalty for failure to deliver up see note 9 supra.

15 Fireworks Act 1951 s 2(4). The provisions of s 2(3) (see notes 8, 11 supra) do not apply to a notice under s 2(4): s 2(4).

16 Ie under the Explosives Act 1875: see ss 12 (as amended), 39; and PARA 943 ante.

17 Fireworks Act 1951 s 2(4).

UPDATE

924-970 Manufacture and Keeping of Explosives

The provisions of the Explosives Act 1875 and subordinate legislation relating to the manufacture and storage of explosives are largely replaced by the Manufacture and Storage of Explosives Regulations 2005, SI 2005/1082: see PARAS 924A-924E.

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

951 Dangerous fireworks

NOTE 3--1951 Act s 2(6) repealed: SI 2005/1082.

NOTE 4--'Occupier', in the case of any manufacture, includes any person carrying on such manufacture: 1951 Act s 9 (substituted by SI 2005/1082).

NOTE 7--Reference to a licence is to a licence under the Manufacture and Storage of Explosives Regulations 2005, SI 2005/1082 (see PARAS 924A-924E): 1951 Act s 2(2) (amended by SI 2005/1082).

NOTE 9--1991 Act s 18, consolidated in Powers of Criminal Courts (Sentencing) Act 2000 s 128, repealed: Criminal Justice Act 2003 Sch 37 Pt 7. See now s 162.

TEXT AND NOTES 10, 11--1951 Act s 2(3) proviso repealed: SI 2005/1082.

TEXT AND NOTES 16, 17--1951 Act s 2(4) amended: SI 2005/1082.

Halsbury's Laws of England/EXPLOSIVES (VOLUME 17(2) (REISSUE))/2. MANUFACTURE AND KEEPING OF EXPLOSIVES/(1) FACTORIES AND MAGAZINES/(vii) Manufacture of Fireworks/952. Negligent manufacture of fireworks.

952. Negligent manufacture of fireworks.

If the Health and Safety Executive¹ is of the opinion that in any factory the manufacture or storing of fireworks is being carried on in such a way as to cause danger to persons in or about the factory from explosion or fire, and considers that a notice of determination or amendment of licence² should be served on the occupier³ of the factory, it must give the occupier a statement setting out its opinion and the facts on which it is based, and must afford him a reasonable opportunity of making representations as to the accuracy of those facts⁴. If, after considering any such representations, the Health and Safety Executive remains of the same opinion, it may, at any time more than 14 days after giving the statement, serve on the occupier of a factory any such notice as the Secretary of State⁵ might serve in relation to a factory manufacturing fireworks which would be dangerous when in the possession of the public⁶, and the same consequences ensue where a notice is served under this provision as ensue upon service of a notice under the provisions as to dangerous fireworks⁷. No notice may, however, be served in respect of a factory unless within the period of two years ending with the service of the notice the occupier (or his predecessor⁸) has been convicted of a breach of the terms of the factory licence⁹, or a breach of the general rules for explosives factories¹⁰ or small firework factories¹¹, and the offence for which that person was convicted related to that factory¹².

1 As to the Health and Safety Executive see HEALTH AND SAFETY AT WORK vol 52 (2009) PARAS 361-371.

2 Ie such a notice as might be served under the Fireworks Act 1951 s 2 (as amended): see PARA 951 ante.

3 As to the meaning of 'occupier' see PARA 951 note 4 ante.

4 Fireworks Act 1951 s 4(1) (amended by the Explosives Acts 1875 and 1923 etc (Repeals and Modifications) Regulations 1974, SI 1974/1885, reg 6(c)).

5 As to the Secretary of State see PARA 913 ante.

6 See PARA 951 ante.

7 Fireworks Act 1951 s 4(2) (amended by the Explosives Acts 1875 and 1923 etc (Repeals and Modifications) Regulations 1974, SI 1974/1885, reg 6(c)).

8 See the Fireworks Act 1951 s 4(4).

9 Ie under the Explosives Act 1875 s 9 (as amended), s 39: see PARA 938 ante.

10 Ie under ibid s 10 (as amended), s 39: see PARAS 939, 940 ante. For the meaning of 'explosive' see PARA 905 ante.

11 Ie under ibid s 17 (as amended), s 49: see PARA 970 post.

12 Fireworks Act 1951 s 4(3) (amended by the Explosives Acts 1875 and 1923 etc (Repeals and Modifications) Regulations 1974, SI 1974/1885, reg 6(c)).

UPDATE

924-970 Manufacture and Keeping of Explosives

The provisions of the Explosives Act 1875 and subordinate legislation relating to the manufacture and storage of explosives are largely replaced by the Manufacture and Storage of Explosives Regulations 2005, SI 2005/1082: see PARAS 924A-924E.

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

Halsbury's Laws of England/EXPLOSIVES (VOLUME 17(2) (REISSUE))/2. MANUFACTURE AND KEEPING OF EXPLOSIVES/(2) STORES AND REGISTERED PREMISES/(i) Stores/953. Stores.

(2) STORES AND REGISTERED PREMISES

(i) Stores

953. Stores.

Stores¹ for explosives² must either be licensed by the local authority³ or, if in use on 14 June 1875, have been kept since that date by virtue of a continuing certificate of the local authority⁴. A store so licensed is distinct from premises registered by the local authority for the keeping of explosives⁵. The local authority must keep a register of all licensed stores, of which the Health and Safety Executive⁶ may at any time require a copy to be sent to it⁷.

1 For the meaning of 'store' see PARA 909 note 2 ante.

2 For the meaning of 'explosive' see PARA 905 ante.

3 As to the local authorities for this purpose see PARA 921 ante.

4 See the Explosives Act 1875 s 5 (as amended), s 39; and PARA 927 ante. As to continuing certificates see PARA 961 post.

5 As to registered premises see PARAS 962, 963 post.

6 As to the Health and Safety Executive see HEALTH AND SAFETY AT WORK vol 52 (2009) PARAS 361-371.

7 See the Explosives Act 1875 s 28 (amended by the Explosives Acts 1875 and 1923 etc (Repeals and Modifications) Regulations 1974, SI 1974/1885, regs 2, 9, Sch 1, Sch 2 para 3). If the clerk of a local authority fails to send the Health and Safety Executive a copy of the report requested within the time fixed, then the clerk, and also the local authority if it is at fault, is liable to a penalty not exceeding £1 for every day during which the default continues: see the Explosives Act 1875 s 28 (as so amended).

UPDATE

924-970 Manufacture and Keeping of Explosives

The provisions of the Explosives Act 1875 and subordinate legislation relating to the manufacture and storage of explosives are largely replaced by the Manufacture and Storage of Explosives Regulations 2005, SI 2005/1082: see PARAS 924A-924E.

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

Halsbury's Laws of England/EXPLOSIVES (VOLUME 17(2) (REISSUE))/2. MANUFACTURE AND KEEPING OF EXPLOSIVES/(2) STORES AND REGISTERED PREMISES/(i) Stores/954. Application for store licence.

954. Application for store licence.

Any person¹ may apply for a store² licence to the local authority³ at the time and place appointed by the authority, stating his name, address and occupation, the proposed site and construction of the store, and the amount of explosive⁴ he proposes to store in it; and the local authority must, as soon as practicable, if the proposed site and construction of the store and the amount of explosive are in accordance with the appropriate Order in Council⁵, grant the licence to the applicant, on payment of such fee as the authority may fix⁶. All buildings and places adjoining each other and in the same occupation are deemed to be the same store and must be included in one licence⁷.

Where any store has been wholly or partly destroyed by fire or explosion, it may not be reconstructed and no further supply of explosive may be put there except with permission of the Health and Safety Executive⁸.

1 'Person' includes a body corporate: Explosives Act 1875 s 108.

2 For the meaning of 'store' see PARA 909 note 2 ante.

3 As to the local authorities for this purpose see PARA 921 ante.

4 For the meaning of 'explosive' see PARA 905 ante.

5 See PARA 956 note 3 post.

6 Explosives Act 1875 s 15 (amended by the Health and Safety (Explosives and Petroleum Fees) (Modification) Regulations 1987, SI 1987/52, reg 2, Sch 1). See also the Explosives Act 1875 s 39. The fee must not exceed £65: Explosives Act 1875 s 15 (as so amended); Health and Safety (Fees) Regulations 1999, SI 1999/645, Sch 9 Pt II. If no fee is fixed the maximum is payable: see further PARA 923 note 2 ante.

7 Explosives Act 1875 s 27.

8 See PARA 946 ante. Explosive put in a store without such permission is deemed to be kept in an unauthorised place: see PARA 927 ante. As to the Health and Safety Executive see HEALTH AND SAFETY AT WORK vol 52 (2009) PARAS 361-371.

UPDATE

924-970 Manufacture and Keeping of Explosives

The provisions of the Explosives Act 1875 and subordinate legislation relating to the manufacture and storage of explosives are largely replaced by the Manufacture and Storage of Explosives Regulations 2005, SI 2005/1082: see PARAS 924A-924E.

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

Halsbury's Laws of England/EXPLOSIVES (VOLUME 17(2) (REISSUE))/2. MANUFACTURE AND KEEPING OF EXPLOSIVES/(2) STORES AND REGISTERED PREMISES/(i) Stores/955. Store licence not transferable.

955. Store licence not transferable.

A store¹ licence is to be in the form directed from time to time by the Health and Safety Executive², is valid only for the person named in it, and must be renewed annually³. Unless the circumstances have so changed that the grant of a new licence would not be authorised, on application by post or otherwise and on payment of such fee as may be fixed by the local authority⁴, the licence must be renewed by the authority, by indorsement or otherwise, for that year, and unless so renewed it expires⁵. In the event of the death, bankruptcy or disability of the holder, no penalty is incurred by the person carrying on the business and acting under the licence for such reasonable period as may be necessary for him to obtain his own store licence⁶.

1 For the meaning of 'store' see PARA 909 note 2 ante.

2 As to the Health and Safety Executive see HEALTH AND SAFETY AT WORK vol 52 (2009) PARAS 361-371.

3 Explosives Act 1875 s 18 (amended by the Explosives Acts 1875 and 1923 etc (Repeals and Modifications) Regulations 1974, SI 1974/1885, regs 2(b), 9, Sch 2 para 3). See also the Explosives Act 1875 s 39.

4 The maximum fee may not exceed £65: see *ibid* s 18 (as so amended); Health and Safety (Fees) Regulations 1999, SI 1999/645, Sch 9 Pt II. See also PARA 923 note 2 ante.

5 Explosives Act 1875 s 18 (amended by the Health and Safety (Explosives and Petroleum Fees) (Modification) Regulations 1987, SI 1987/52, reg 2, Sch 1).

6 Explosives Act 1875 s 29 (amended by the Explosives Acts 1875 and 1923 etc (Repeals and Modifications) Regulations 1974, SI 1974/1885, regs 2(a), 9, Sch 1).

UPDATE

924-970 Manufacture and Keeping of Explosives

The provisions of the Explosives Act 1875 and subordinate legislation relating to the manufacture and storage of explosives are largely replaced by the Manufacture and Storage of Explosives Regulations 2005, SI 2005/1082: see PARAS 924A-924E.

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

Halsbury's Laws of England/EXPLOSIVES (VOLUME 17(2) (REISSUE))/2. MANUFACTURE AND KEEPING OF EXPLOSIVES/(2) STORES AND REGISTERED PREMISES/(i) Stores/956. Regulation of stores.

956. Regulation of stores.

Her Majesty may by Order in Council regulate the construction, materials and fittings of stores¹, prescribe the buildings and works from which and the distances by which stores are to be separated, and prescribe the maximum amount of explosive² (in the case of gunpowder not exceeding 2000 kg, and in the case of other explosives the prescribed amount) to be kept in stores, graduated according to their construction, situation and distance from such buildings and works³.

1 For the meaning of 'store' see PARA 909 note 2 ante.

2 For the meaning of 'explosive' see PARA 905 ante.

3 Explosives Act 1875 s 16 (amended by the Explosives Act 1875 etc (Metrication and Miscellaneous Amendment) Regulations 1984, SI 1984/510, reg 2, Sch 1). See also the Explosives Act ss 39, 40(4) (as amended: see PARA 976 post). The removal of any building lawfully in use at the date of making the Order cannot be required: s 16 proviso. Two Orders in Council are now in force: (1) Order in Council (No 6) dated 27 November 1875 (amended by SR & O 1923/1300; SR & O 1940/1992; SI 1951/1163; SI 1953/1197; SI 1974/1885; SI 1984/510), which originally applied to stores licensed for mixed explosives, but which has been extended by SI 1951/1163 to include stores licensed exclusively for gunpowder; now, the Order, as amended and extended, classifies stores in five divisions, according to the distances between the store and certain protected works, which are themselves of two classes, and specifies the amount of explosive which may be kept in a store of each division; it also prescribes constructional requirements; a store must not be used for keeping explosive unless it qualifies in one of the divisions; (2) Order in Council (No 5) dated 27 November 1875, art 5 (amended by SI 1974/1885). This provision relates only to gunpowder stores in use on 14 July 1875 which have been continued under continuing certificates (see PARA 961 post); the remainder of the Order was revoked by SI 1951/1163, which extended the No 6 Order (relating to stores for mixed explosives: see supra) to stores licensed exclusively for gunpowder.

UPDATE

924-970 Manufacture and Keeping of Explosives

The provisions of the Explosives Act 1875 and subordinate legislation relating to the manufacture and storage of explosives are largely replaced by the Manufacture and Storage of Explosives Regulations 2005, SI 2005/1082: see PARAS 924A-924E.

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

Halsbury's Laws of England/EXPLOSIVES (VOLUME 17(2) (REISSUE))/2. MANUFACTURE AND KEEPING OF EXPLOSIVES/(2) STORES AND REGISTERED PREMISES/(i) Stores/957. General rules for gunpowder stores.

957. General rules for gunpowder stores.

In every store¹ certain general rules must be observed². The general rules relating to gunpowder stores are contained in the Explosives Act 1875³. The applicable provisions of any Order in Council⁴ relating to stores must be observed and no more than the licensed amount of gunpowder may be kept⁵. The store must only be used for keeping gunpowder, and receptacles for tools or implements for work connected with the keeping of gunpowder⁶. The interior, benches, shelves and fittings must be so constructed, lined or covered as not to expose iron or steel or to detach grit, iron, steel or the like which would come in contact with gunpowder and must, so far as is reasonably practicable, be kept free from grit and otherwise clean⁷. A sufficient lightning conductor must be attached, unless the store is excavated or is licensed for less than 500 kg of gunpowder⁸. Before repairs are done to or in any part of the store, it must, so far as practicable, be cleaned by removing all gunpowder and by thorough washing⁹. Except after such cleaning, the tools and implements used in, or in any repairs to, the store must be made only of wood, copper, brass or some soft metal or material or be covered with a safe and suitable material¹⁰. Precautions must be taken, by the use of pocketless working clothes, suitable shoes, searching and similar means to prevent the introduction of fire, matches, iron, steel, grit or any substance likely to cause explosion or fire, but this rule does not prohibit artificial lights of such construction, position or character so as not to cause any danger of fire or explosion¹¹. Smoking is prohibited in all parts of a store¹². Persons under the age of 18 years may only work in or enter the store in the presence and under the supervision of a person of 21 years or over¹³.

In the event of any breach (by any act or default) of the general rules in any store, the occupier¹⁴ is guilty of an offence¹⁵.

1 For the meaning of 'store' see PARA 909 note 2 ante.

2 Explosives Act 1875 s 17.

3 Ibid s 17.

4 See the Orders in Council cited in PARA 956 note 3 ante.

5 Explosives Act 1875 s 17(1), (2).

6 Ibid s 17(3).

7 Ibid s 17(4).

8 Ibid s 17(5) (amended by the Explosives Act 1875 etc (Metrication and Miscellaneous Amendment) Regulations 1984, SI 1984/510, reg 2, Sch 1).

9 Explosives Act 1875 s 17(6). After cleaning, s 17 ceases to apply to the store until gunpowder is taken there again: s 17(6).

10 Ibid s 17(7).

11 Ibid s 17(8).

12 Ibid s 17(9).

13 Ibid s 17(10) (substituted by the Explosives Act 1923 s 2(2)).

14 For the meaning of 'occupier' see PARA 926 note 1 ante.

15 Explosives Act 1875 s 17 (substituted by the Explosives Act 1875 and 1923 etc (Repeals and Modifications) Regulations 1974, SI 1974/1885, regs 2, 9, Sch 2 para 9). As to the penalties for offences see PARA 1017 post.

UPDATE

924-970 Manufacture and Keeping of Explosives

The provisions of the Explosives Act 1875 and subordinate legislation relating to the manufacture and storage of explosives are largely replaced by the Manufacture and Storage of Explosives Regulations 2005, SI 2005/1082: see PARAS 924A-924E.

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

Halsbury's Laws of England/EXPLOSIVES (VOLUME 17(2) (REISSUE))/2. MANUFACTURE AND KEEPING OF EXPLOSIVES/(2) STORES AND REGISTERED PREMISES/(i) Stores/958. General rules for mixed stores.

958. General rules for mixed stores.

In the case of stores¹ for mixed explosives², the general rules prescribed by Order in Council apply instead of the foregoing general rules for gunpowder stores³. The requirements of the Order in Council⁴ are similar to those summarised above with the following differences. The lawful quantity of explosive depends on the division under which the store is licensed⁵. Where nothing but ammunition is kept, there is no prohibition against the exposure of iron and steel, a lightning conductor is not required, and the rules about repairs, tools and the exclusion of iron, steel and grit do not apply⁶. Where the store is made by excavation, or is licensed under Division A or B, or contains nothing but ammunition, it need not have a lightning conductor. Precautions must be taken to exclude water from a store containing explosive liable to be dangerously affected by it⁷. A young person under the age of 16 may not be employed, and a person under the age of 18 may only be employed in or enter the store under the supervision of a person of 21 years or over⁸. A notice must be affixed showing the general rules, the special rules, if any, the division under which the store is licensed and such parts of the Explosives Act 1875 as the Health and Safety Executive may require⁹. No store may contain explosive of the fulminate class or any unauthorised explosive¹⁰.

Two or more descriptions of explosives may only be kept in the same store if they have been prescribed for that purpose and subject to the prescribed conditions and restrictions¹¹. All explosives which may be lawfully kept alone in a store have been so prescribed, provided they are separated by a sufficient partition, but this requirement does not apply to certain groups of explosives being kept together¹².

1 For the meaning of 'store' see PARA 909 note 2 ante.

2 For the meaning of 'explosive' see PARA 905 ante.

3 See the Explosives Act 1875 s 40(2), (7).

4 See Order in Council (No 6) dated 27 November 1875, Pt V (amended by SR & O 1923/1300; SR & O 1940/1992; SI 1951/1163; SI 1974/1885).

5 See Order in Council (No 6) dated 27 November 1875, Pt V r 2 (amended by SR & O 1923/1300; SR & O 1940/1992).

6 See Order in Council (No 6) dated 27 November 1875 Pt V rr 4, 5 (amended by SR & O 1923/1300; SR & O 1940/1992; SI 1951/1163).

7 See Order in Council (No 6) dated 27 November 1875, Pt V r 8 (amended by SR & O 1923/1300; SR & O 1940/1992).

8 See Order in Council (No 6) dated 27 November 1875, Pt V r 10 (amended by SR & O 1923/1300; SR & O 1940/1992).

9 See Order in Council (No 6) dated 27 November 1875, Pt V r 11 (amended by SR & O 1923/1300; SR & O 1940/1992; SI 1974/1885). As to the Health and Safety Executive see HEALTH AND SAFETY AT WORK vol 52 (2009) PARAS 361-371. As to the special rules see PARA 960 post.

10 Order in Council (No 6A) dated 20 April 1883, art 1.

11 Explosives Act 1875 s 40(5).

12 See Order in Council (No 6) dated 27 November 1875, Pt II (amended by SR & O 1923/1300; SR & O 1940/1992).

UPDATE

924-970 Manufacture and Keeping of Explosives

The provisions of the Explosives Act 1875 and subordinate legislation relating to the manufacture and storage of explosives are largely replaced by the Manufacture and Storage of Explosives Regulations 2005, SI 2005/1082: see PARAS 924A-924E.

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

Halsbury's Laws of England/EXPLOSIVES (VOLUME 17(2) (REISSUE))/2. MANUFACTURE AND KEEPING OF EXPLOSIVES/(2) STORES AND REGISTERED PREMISES/(i) Stores/959. Additional precautions; offences.

959. Additional precautions; offences.

Occupiers of gunpowder stores¹ and mixed stores and their employees are under a duty to take all due precautions to prevent accidents by fire or explosion, to prevent unauthorised access, and to abstain from any act which tends to cause fire or explosion and is not reasonably necessary for the purpose of the work there². The Secretary of State³ has power to prescribe special precautions to be taken in a store in special circumstances⁴. Any breach of the foregoing provisions is treated as a breach of the general rules⁵. In the event of any breach, by any act or default, of the general rules in any store, the occupier⁶ is guilty of an offence⁷.

1 For the meaning of 'store' see PARA 909 note 2 ante.

2 Explosives Act 1875 s 23.

3 As to the Secretary of State see PARA 913 ante.

4 See the Explosives Act 1923 s 1(1).

5 Explosives Act 1875 s 23. See also the Explosives Act 1923 s 1(1).

6 For the meaning of 'occupier' see PARA 926 note 1 ante.

7 Explosives Act 1875 s 17 (this part of the section substituted by the Explosives Acts 1875 and 1923 etc (Repeals and Modifications) Regulations 1974, SI 1974/1885, regs 2(b), 9, Sch 2 para 9). See also the Explosives Act 1875 s 39. As to the penalties for such an offence see PARA 1017 post.

UPDATE

924-970 Manufacture and Keeping of Explosives

The provisions of the Explosives Act 1875 and subordinate legislation relating to the manufacture and storage of explosives are largely replaced by the Manufacture and Storage of Explosives Regulations 2005, SI 2005/1082: see PARAS 924A-924E.

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

959 Additional precautions; offences

TEXT AND NOTES 1, 2--1875 Act s 23 substituted: see PARA 941.

Halsbury's Laws of England/EXPLOSIVES (VOLUME 17(2) (REISSUE))/2. MANUFACTURE AND KEEPING OF EXPLOSIVES/(2) STORES AND REGISTERED PREMISES/(i) Stores/960. Special rules.

960. Special rules.

With the sanction of the Health and Safety Executive¹, the occupier² of a store³ may make, repeal, alter or add to special rules for the regulation of the persons managing or employed in or about the store, with a view to securing the observance of the Explosives Act 1875, and the safety and proper discipline of those persons and the public⁴. A person who contravenes any such special rule is guilty of an offence⁵.

1 As to the Health and Safety Executive see HEALTH AND SAFETY AT WORK vol 52 (2009) PARAS 361-371.

2 For the meaning of 'occupier' see PARA 926 note 1 ante.

3 For the meaning of 'store' see PARA 909 note 2 ante.

4 Explosives Act 1875 s 19 (amended by the Explosives Acts 1875 and 1923 etc (Repeals and Modifications) Regulations 1974, SI 1974/1885, regs 2(b), 9, Sch 2 paras 3, 10). See also the Explosives Act 1875 s 39. See further PARA 942 ante.

5 Ibid s 19 (as amended: see note 4 supra). As to the penalties for such an offence see PARA 1017 post.

UPDATE

924-970 Manufacture and Keeping of Explosives

The provisions of the Explosives Act 1875 and subordinate legislation relating to the manufacture and storage of explosives are largely replaced by the Manufacture and Storage of Explosives Regulations 2005, SI 2005/1082: see PARAS 924A-924E.

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

Halsbury's Laws of England/EXPLOSIVES (VOLUME 17(2) (REISSUE))/2. MANUFACTURE AND KEEPING OF EXPLOSIVES/(2) STORES AND REGISTERED PREMISES/(i) Stores/961. Existing gunpowder stores.

961. Existing gunpowder stores.

Gunpowder may be lawfully kept in accordance with certain conditions in an existing gunpowder store¹. An existing gunpowder store is a magazine² established without a licence from a local authority in pursuance of the Gunpowder Act 1860³ or of any enactment repealed by that Act, for the use of any mine, quarry, colliery or factory of safety fuses, which was in use on 14 June 1875, provided that a continuing certificate was obtained from the local authority on application made within three months from the commencement of the Explosives Act 1875⁴. A continuing certificate is of unlimited duration, but discontinuance of the business for a year or change of use nullifies its effect⁵. The store must not be enlarged, added to or altered so as to be of less secure construction⁶. Nothing prevents the issue of a licence from the local authority for an existing store, and a store for which such a licence is obtained, whether or not a continuing certificate has previously been obtained, ceases to be deemed an existing gunpowder store⁷. If a licence is granted under the Explosives Act 1875 for keeping in a gunpowder store in use on 14 June 1875 any other explosive, the continuing certificate of the store will be determined and the store will cease to be deemed an existing gunpowder store⁸.

A store under a continuing certificate is subject to certain regulations contained in the Explosives Act 1875⁹ and to special provisions made by Order in Council¹⁰.

1 See the Explosives Act 1875 s 5 (as amended); and PARA 927 ante. For the meaning of 'store' see PARA 909 note 2 ante.

2 For the meaning of 'magazine' see PARA 909 note 1 ante.

3 The Gunpowder Act 1860 was repealed by the Explosives Act 1875 s 122, Sch 4 (repealed).

4 Explosives Act 1875 s 20. An existing gunpowder store does not require a continuing certificate as a magazine from the Secretary of State: s 20. As to the Secretary of State see PARA 913 ante. As to the local authorities for this purpose see PARA 921 ante.

5 Ibid s 20 proviso (2).

6 Ibid s 20 proviso (1). Breach of this proviso is deemed to be a breach of the general rules relating to stores (see PARA 957 ante): s 20 proviso (1).

7 Ibid s 20 (amended by the Statute Law (Repeals) Act 1993).

8 Explosives Act 1875 s 51.

9 See ibid s 20, Sch 1 Pt II (amended by the Explosives Act 1875 etc (Metrication and Miscellaneous Amendment) Regulations 1984, SI 1984/510, reg 2, Sch 1). Breach of the regulations is punishable as a breach of the general rules relating to stores (see PARA 957 ante): see the Explosives Act 1875 ss 17, 20.

10 Order in Council (No 5) dated 27 November 1875, art 5 (amended by SI 1974/1885), relating to stores for gunpowder exclusively, which is saved by SI 1951/1163: see PARA 956 note 3 ante.

UPDATE

924-970 Manufacture and Keeping of Explosives

The provisions of the Explosives Act 1875 and subordinate legislation relating to the manufacture and storage of explosives are largely replaced by the Manufacture and Storage of Explosives Regulations 2005, SI 2005/1082: see PARAS 924A-924E.

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

Halsbury's Laws of England/EXPLOSIVES (VOLUME 17(2) (REISSUE))/2. MANUFACTURE AND KEEPING OF EXPLOSIVES/(2) STORES AND REGISTERED PREMISES/(ii) Registered Premises/962. Registration of premises.

(ii) Registered Premises

962. Registration of premises.

A person¹ who wishes to register with the local authority² any premises for the keeping of explosives³ may do so by registering his name and occupation and the premises in such manner, and on payment of such fee, not exceeding that from time to time fixed by or determined under regulations made in accordance with the relevant statutory provision⁴, as may be directed by the authority⁵. The registration is valid only for the person registered⁶, and must be renewed annually by sending, by post or otherwise, notice of renewal to the authority, together with such fee, not exceeding that from time to time fixed by or determined under regulations made in accordance with the relevant statutory provision⁷, as may be fixed by the authority⁸. For the purposes of registration all buildings and places adjoining each other and occupied together are deemed to be the same premises⁹.

1 For the meaning of 'person' see PARA 925 note 5 ante.

2 As to local authorities see PARA 921 ante.

3 For the meaning of 'explosive' see PARA 905 ante.

4 I.e. the Health and Safety at Work etc Act 1974 s 43(2). At the date at which this volume states the law, the maximum fee is £11.20: see the Health and Safety (Fees) Regulations 1999, SI 1999/645, Sch 9 Pt II. As to the fee see also PARA 923 note 2 ante.

5 Explosives Act 1875 s 21 (amended by the Health and Safety (Explosives and Petroleum Fees) (Modification) Regulations 1987, SI 1987/52, reg 2, Sch 1). See also the Explosives Act 1875 s 39. Registration is not necessary for keeping fog signals for use on a railway: see s 50 (as amended); and PARA 910 ante.

6 As to further registration after the death or disability of the occupier see PARA 955 ante. The provisions there cited apply to registered premises as to licensed stores: *ibid* s 29.

7 I.e. the Health and Safety at Work etc Act 1974 s 43(2). At the date at which this volume states the law, the maximum fee is £11.20: see the Health and Safety (Fees) Regulations 1999, SI 1999/645, Sch 9 Pt II. As to the fee see also PARA 923 note 2 ante.

8 Explosives Act 1875 s 21 (as amended: see note 5 *supra*). See also s 39.

9 *Ibid* s 27.

UPDATE

924-970 Manufacture and Keeping of Explosives

The provisions of the Explosives Act 1875 and subordinate legislation relating to the manufacture and storage of explosives are largely replaced by the Manufacture and Storage of Explosives Regulations 2005, SI 2005/1082: see PARAS 924A-924E.

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

Halsbury's Laws of England/EXPLOSIVES (VOLUME 17(2) (REISSUE))/2. MANUFACTURE AND KEEPING OF EXPLOSIVES/(2) STORES AND REGISTERED PREMISES/(ii) Registered Premises/963. General rules for registered premises.

963. General rules for registered premises.

The general rules to be observed in premises registered for keeping gunpowder only are contained in the Explosives Act 1875¹, and those to be observed in premises registered for keeping mixed explosives are laid down by Order in Council². The provisions which impose upon the occupiers of factories and magazines and their employees a duty to take all due precautions to prevent accidents and trespassing, and which empower the Secretary of State³ to prescribe special precautions to be taken in special circumstances, apply equally in the case of registered premises⁴.

1 See the Explosives Act 1875 s 22; and PARA 964 post.

2 See PARA 965 post.

3 As to the Secretary of State see PARA 913 ante.

4 See the Explosives Act 1875 s 23; the Explosives Act 1923 s 1; and PARA 941 ante.

UPDATE

924-970 Manufacture and Keeping of Explosives

The provisions of the Explosives Act 1875 and subordinate legislation relating to the manufacture and storage of explosives are largely replaced by the Manufacture and Storage of Explosives Regulations 2005, SI 2005/1082: see PARAS 924A-924E.

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

963 General rules for registered premises

TEXT AND NOTES 3, 4--1951 Act s 23 substituted: see PARA 941. 1923 Act repealed: SI 2005/1082.

Halsbury's Laws of England/EXPLOSIVES (VOLUME 17(2) (REISSUE))/2. MANUFACTURE AND KEEPING OF EXPLOSIVES/(2) STORES AND REGISTERED PREMISES/(ii) Registered Premises/964. Gunpowder.

964. Gunpowder.

In premises registered for gunpowder only, the gunpowder must be kept in a house or building, or in a fire-proof safe which, if not in a house or building, must be at a safe distance from any highway, street, thoroughfare or public place¹. An amount of gunpowder not exceeding 100 kg may be kept in a substantially constructed building used only for the purpose and detached from a dwelling house, or in a fire-proof safe away from a dwelling house and at a safe distance from any highway or public place². If the gunpowder is kept inside a dwelling house or in a building otherwise than as mentioned, the amount may not exceed 25 kg, unless it is kept in a fire-proof safe within such a house or building, in which case the amount may not exceed 50 kg³.

Any article or substance of an explosive or highly inflammable nature must not be kept in a fire-proof safe with gunpowder but must be kept at a safe distance from gunpowder or the safe containing it⁴. There must be no exposed iron or steel in the interior of any building or fire-proof safe used exclusively for keeping gunpowder⁵; and any gunpowder exceeding 500 g in amount must be kept in a substantial case, bag, canister or other receptacle made and closed so as to prevent it from escaping⁶.

1 Explosives Act 1875 s 22(1).

2 Ibid s 22(2)(a) (amended by the Explosives Act 1875 etc (Metrication and Miscellaneous Amendment) Regulations 1984, SI 1984/510, reg 2, Sch 1).

3 Explosives Act 1875 s 22(2)(b) (as amended: see note 2 supra).

4 Ibid s 22(3).

5 Ibid s 22(4).

6 Ibid s 22(5) (amended by the Explosives Act 1875 etc (Metrication and Miscellaneous Amendment) Regulations 1984, SI 1984/510, reg 2, Sch 1).

UPDATE

924-970 Manufacture and Keeping of Explosives

The provisions of the Explosives Act 1875 and subordinate legislation relating to the manufacture and storage of explosives are largely replaced by the Manufacture and Storage of Explosives Regulations 2005, SI 2005/1082: see PARAS 924A-924E.

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

Halsbury's Laws of England/EXPLOSIVES (VOLUME 17(2) (REISSUE))/2. MANUFACTURE AND KEEPING OF EXPLOSIVES/(2) STORES AND REGISTERED PREMISES/(ii) Registered Premises/965. Mixed explosives.

965. Mixed explosives.

In the case of premises registered for mixed explosives the Orders in Council forbid the keeping of any unauthorised explosive¹ or any explosive of the fulminate class². The explosives must be kept either in Mode A or in Mode B³. Only gunpowder or small-arm nitro-compound⁴ and certain cartridges may be kept in a fire-proof safe. There are provisions relating to the construction of buildings and receptacles to prevent the exposure of iron or steel except where only ammunition of Division 1 is kept, to the removal of grit, and to the exclusion of water, if likely to affect the explosive dangerously⁵. Any highly inflammable article or substance and any article liable to cause fire or explosion must be kept at a safe distance from any explosive⁶. Any explosive, other than ammunition of Division 1 or fireworks, exceeding 500 g in weight must be kept in a properly closed case and no package containing more than that amount may be opened on registered premises unless it contains equally secure inner packages⁷. Different maximum amounts are prescribed for the two modes, according to whether the explosive is (1) gunpowder, small-arm nitro-compound and ammunition only; (2) fireworks and ammunition; and (3) other explosives⁸. If both modes are used, the total amount may not exceed that prescribed for the first mode⁹.

Where premises are registered for mixed explosives, two or more descriptions of explosives may not be kept there at the same time unless the descriptions are prescribed for this purpose¹⁰. No unauthorised explosive¹¹ or any explosive of the fifth (fulminate) class¹² may in any circumstances be kept on the premises¹³.

1 See PARA 907 ante. For the meaning of 'explosive' see PARA 905 ante.

2 See PARA 908 ante.

3 See Order in Council (No 16), SR & O 1896/964, Pt I r 2(1). 'Mode A' means a building or excavation which is detached from any dwelling house, situated at a safe distance from any highway, street, public thoroughfare or public place, made and closed so as to prevent unauthorised access, and exclusively appropriated to keeping explosives. However the building must also be substantially constructed of brick, stone, iron or concrete, or must be a securely constructed fire-proof safe; and any excavation must be formed in solid rock, earth or mine refuse not liable to ignition, not opening into, from or out of any mine, quarry, tunnel or underground place as is in use for the carrying on of any work for the employment of any person: Pt I r 2(1). 'Mode B' means a substantial receptacle secured against unauthorised access, exclusively appropriated to keeping explosives, and placed inside a dwelling house or inside any building not qualified for the keeping of explosives in Mode A: Pt I r 2(1). These provisions are modified where the only explosives to be kept are fireworks which are 'shop goods' within the meaning of Order in Council (No 16A), SR & O 1906/380, art 3 (as amended) (see PARA 908 note 13 ante). See also the Keeping of Fireworks Order 1959, SI 1959/1311, arts 2, 3(2), 4(1) (art 3(2) amended by SI 1984/510).

4 I.e. nitro-compound adapted and intended exclusively for use in cartridges for small arms.

5 See Order in Council (No 16), SR & O 1896/964, Pt I r 2(3).

6 Ibid Pt I r 2(4).

7 Ibid Pt I r 2(5) (amended by SI 1984/510). This does not apply to the opening in a workshop of packages containing not more than 2 kg of gunpowder or small-arm nitro-compound for the immediate filling of small-arm cartridges: Order in Council (No 16), SR & O 1896/964, Pt I r 2(5) (as so amended).

8 See ibid Pt I r 3; Order in Council (No 16B), SR & O 1912/1861 (amended by SI 1984/510); and the Keeping of Fireworks Order 1959, SI 1959/1311, art 3(1), Schedule (amended by SI 1984/510). In calculating these amounts, fireworks which are shop goods (defined in PARA 908 note 13 ante) count for only half the same weight

of other fireworks (Order in Council (No 16A), SR & O 1906/380, art 2 (as amended: see 908 note 13 ante)), except in cases where shop goods, either alone or with certain kinds of ammunition only, are to be kept (Keeping of Fireworks Order 1959, SI 1959/1311, art 3(1)).

9 Order in Council (No 16), SR & O 1896/964, Pt I r 3 (amended by SI 1984/510); Order in Council (No 16B), SR & O 1912/1861 (amended by SI 1984/510).

10 See the Explosives Act 1875 s 40(5). The prescribed explosives are all those that may be lawfully kept alone on such registered premises, but some explosives are only so prescribed when certain conditions are obtained as to partitioning, spacing and non-exposure of iron or steel: see Order in Council (No 16), SR & O 1896/964, Pt II.

11 See PARA 907 ante.

12 See PARA 908 ante.

13 Order in Council (No 16), SR & O 1896/964, Pt I r 1.

UPDATE

924-970 Manufacture and Keeping of Explosives

The provisions of the Explosives Act 1875 and subordinate legislation relating to the manufacture and storage of explosives are largely replaced by the Manufacture and Storage of Explosives Regulations 2005, SI 2005/1082: see PARAS 924A-924E.

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

Halsbury's Laws of England/EXPLOSIVES (VOLUME 17(2) (REISSUE))/2. MANUFACTURE AND KEEPING OF EXPLOSIVES/(2) STORES AND REGISTERED PREMISES/(ii) Registered Premises/966. Additional precautions; offences.

966. Additional precautions; offences.

Occupiers¹ of registered premises and their employees are under a duty to take all due precautions to prevent accidents by fire or explosion and unauthorised access to any explosive², and to abstain from any act which tends to cause fire or explosion and is not reasonably necessary for the purpose of work there³. The Secretary of State⁴ has power to prescribe special precautions to be taken in particular premises in special circumstances⁵. Any breach of the foregoing provisions is treated as a breach of the general rules⁶. In the event of any breach, by any act or default, of the general rules in any registered premises, the occupier is guilty of an offence⁷.

1 For the meaning of 'occupier' see PARA 926 note 1 ante.

2 For the meaning of 'explosive' see PARA 905 ante.

3 Explosives Act 1875 s 23.

4 As to the Secretary of State see PARA 913 ante.

5 See the Explosives Act 1923 s 1.

6 Explosives Act 1875 s 23.

7 Ibid s 22 (amended by the Explosives Acts 1875 and 1923 etc (Repeals and Modifications) Regulations 1974, SI 1974/1885, regs 2(b), 9, Sch 2 para 11). See also the Explosives Act 1875 s 39. As to the penalties for such an offence see PARA 1017 post.

UPDATE

924-970 Manufacture and Keeping of Explosives

The provisions of the Explosives Act 1875 and subordinate legislation relating to the manufacture and storage of explosives are largely replaced by the Manufacture and Storage of Explosives Regulations 2005, SI 2005/1082: see PARAS 924A-924E.

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

966 Additional precautions; offences

TEXT AND NOTES 1-6--1875 Act s 23 substituted: see PARA 941.

Halsbury's Laws of England/EXPLOSIVES (VOLUME 17(2) (REISSUE))/2. MANUFACTURE AND KEEPING OF EXPLOSIVES/(2) STORES AND REGISTERED PREMISES/(iii) Police Certificates and Licences/967. Police certificates to keep explosives.

(iii) Police Certificates and Licences

967. Police certificates to keep explosives.

No person may acquire or keep any explosives¹ unless he has a valid explosives certificate². Application for an explosives certificate is to be made to the chief officer of police for the relevant police force³. The chief officer must issue a certificate to a person who he is satisfied is a fit person to hold a certificate in those terms⁴. No person may acquire or keep any explosives unless he acquires or keeps no more explosives than any quantity referred to in the explosives certificate⁵, and where the certificate specifies the description of explosives which he is a fit person to acquire or the purposes for which he is a fit person to acquire explosives, he must acquire or keep only explosives of that description or must acquire them only for those purposes⁶. He must keep the explosives at a place specified in the certificate⁷. In any case, no prohibited person may acquire, keep, handle or have control of any explosive or any restricted substance⁸ and no employer may knowingly employ a prohibited person in a position where he handles or has control of any explosive or any restricted substance⁹.

A chief officer of police is empowered to revoke an explosives certificate issued by him if, at any time, he is satisfied that the holder was not, at the time the explosives certificate was issued, or is no longer, a fit person to hold an explosives certificate in the terms of that explosives certificate¹⁰. A chief officer must revoke an explosives certificate issued by him if, at any time, he is satisfied that any of the specified conditions¹¹ were not met when the explosives certificate was issued, or is no longer met¹². The Health and Safety Executive may revoke or amend any licence, in whole or in part, if it is satisfied that for any reason including the circumstances in which any explosive is or may be kept, any explosive in any factory or magazine to which the licence relates is insufficiently secure or insufficiently safe¹³.

An explosives certificate will cease to be valid:

- 51 (1) three years after the date of issue¹⁴;
- 52 (2) one year after the date of issue where the certificate relates only to the acquisition of explosives¹⁵;
- 53 (3) after such lesser time as may be stated in the certificate¹⁶;
- 54 (4) after notice of revocation by the chief police officer for the relevant police force has been served on the holder of the certificate¹⁷,

whichever happens first¹⁸. The holder of the certificate must, immediately after it has ceased to be valid, surrender it to the chief officer of police who issued it¹⁹.

A person aggrieved by any decision of a chief officer of police²⁰ may appeal to the Crown Court within 21 days of receiving notice of that decision²¹. The court hearing an appeal may dismiss or allow it and give directions to the chief officer of police to issue or restore the explosives certificate²². A prohibited person may apply to the Crown Court for an order that he is no longer a prohibited person²³.

The Health and Safety Executive may, by a certificate in writing, exempt any person or class of persons, or any explosive or class of explosives from any requirements or prohibitions imposed, and any such exemptions may be granted subject to conditions and to a limit of time and may be revoked by a certificate in writing at any time²⁴. The Secretary of State may, by certificate in

writing, exempt any person or class of persons or any explosive or class of explosives from any requirement or prohibition imposed where he is satisfied that such exemption is in the interests of national security and any such exemption may be granted subject to conditions and to a time limit and may be revoked by a certificate in writing at any time²⁵.

1 For the meaning of 'explosive' see PARA 931 note 1 ante.

2 Control of Explosives Regulations 1991, SI 1991/1531, reg 7(1)(a), (2)(a). As to restrictions relating to the application of reg 7 see reg 3; and PARA 931 text and notes 17-28 ante. An 'explosives certificate' is a certificate in prescribed form certifying that the person to whom it is issued is a fit person to acquire explosives or to acquire and keep explosives: reg 4(1), Sch 2. For provisions relating to transfer of explosives see reg 8; and PARAS 973-978 post. For restrictions as to explosives for private use see PARA 931 ante.

3 Ibid reg 4(2). The Health and Safety Executive may from time to time approve in writing a form of application for an explosives certificate: reg 4(3). As to the Health and Safety Executive see HEALTH AND SAFETY AT WORK vol 52 (2009) PARAS 361-371. A 'chief officer of police' includes any other member of a police force who has been authorised in writing by the chief officer of police to act on his behalf for the purposes of the regulations: reg 2(1). 'Relevant police force' means, in the case of an explosive certificate which (1) will certify that the holder is a fit person to acquire explosives, the police force for the police area in which the place of keeping is or is to be situated; or (2) will certify only that the holder is a fit person to acquire explosives, the police force for the area in which the applicant resides, or in the case of a body corporate, the place where the applicant has its registered office, or if it has no registered office, its principal office; or (3) has been issued, the police force stated in the certificate: reg 2(1). As to police areas, police forces and chief officers of police see generally POLICE.

For the application procedure where a certificate would, if granted, certify only that the holder is a fit person to acquire explosives and where a person who would be the holder is not resident in Great Britain (or in the case of a body corporate does not have a registered office or any other office in Great Britain) see reg 4(8).

4 Ibid reg 4(4). However, a chief officer of police must not issue an explosives certificate to a person if he is satisfied that the person is of unsound mind or intemperate habit: reg 4(5). The chief officer of police must also not issue an explosives certificate unless he is satisfied (1) that the person has good reason for acquiring the explosives; (2) that the person is a responsible person who may be permitted to acquire the explosives without danger to public safety or to peace (not applicable in respect of explosives kept in a licensed factory or licensed magazine); (3) the person will take all reasonable precautions to prevent access to the explosives by unauthorised persons and to prevent loss of the explosives (not applicable in respect of explosives kept in a licensed factory or licensed magazine); (4) the person is not a prohibited person; (5) where the person is a body corporate, no director or secretary of the body corporate is a prohibited person; (6) where the application is for a certificate relating only to acquisition of explosives, it is not reasonably practicable for the applicant to be an occupier of a licensed factory, licensed magazine, store or registered premises and the explosives either will not be kept, or, if kept, the applicant will ensure that they are kept in a licensed factory, licensed magazine, store or registered premises or in premises occupied by the Secretary of State; (7) where the application is for the keeping of explosives, either (a) the applicant is, or is to be, the occupier of a licensed factory, licensed magazine, store or registered premises; or (b) the explosives will be kept in premises occupied on behalf of the Crown; or (c) the explosives are to be kept for private use, and will be kept in a licensed factory, licensed magazine, store or registered premises, or are of one or more of the descriptions specified in reg 10(1): reg 4(6) (a)-(g). As to the Secretary of State see PARA 913 ante.

'Prohibited person' means, subject to reg 9(3), a person, other than a person in respect of whom an order has been made under reg 6(4) (see text and note 23 infra), who:

- 1 (1) has been convicted of any offence under the Explosives Substances Act 1883; or
- 2 (2) has been sentenced to imprisonment or custody for life; or to imprisonment, detention in a young offenders institution, youth custody or corrective training for a term exceeding 30 months; or to preventive detention; or to detention during Her Majesty's pleasure or for life; or for a term exceeding 30 months passed under the Children and Young Persons Act 1933 s 53 (young offenders convicted of grave crimes); or
- 3 (3) has been sentenced to imprisonment, or youth custody, or detention in a young offenders institution, or corrective training for a term exceeding six months, but not exceeding 30 months, and less than ten years have passed since the conviction for the crime for which sentenced, or less than five years for those under 17 at the time of conviction; or
- 4 (4) has been sentenced to imprisonment or youth custody or detention in a young offenders institution for a term not exceeding six months, and less than seven years have passed since the

conviction for the crime for which sentenced, or less than three and a half years for those under 17 at the time of conviction:

Control of Explosives Regulations 1991, SI 1991/1531, reg 2(1).

5 Ibid reg 7(1)(b), (2)(b).

6 See ibid reg 7(1)(c), (d), (2)(c).

7 Ibid reg 7(2)(d).

8 Ibid reg 9(2): see note 9 infra.

9 Ibid reg 9(1). Regulation 9 does not apply to the employment of or the acquisition, keeping, handling or control of any explosive or any restricted substance in the course of their duties by members of Her Majesty's forces: reg 3(5). For exceptions to explosives to which reg 9(1) applies see reg 3(1), (2).

10 Ibid reg 5(1).

11 Ie the conditions specified in ibid reg 4(5), (6) (see note 4 supra).

12 Ibid reg 5(2).

13 Ibid reg 16.

14 Ibid reg 5(3)(a).

15 Ibid reg 5(3)(b).

16 Ibid reg 5(3)(c).

17 Ibid reg 5(3)(d).

18 Ibid reg 5(3).

19 Ibid reg 5(4).

20 Ie aggrieved by a decision under ibid reg 4 or reg 5. For the meaning of 'person aggrieved' see **JUDICIAL REVIEW** vol 61 (2010) PARA 656.

21 Ibid reg 6(1), (2). For the meaning of 'person aggrieved' see **JUDICIAL REVIEW** vol 61 (2010) PARA 656.

22 Ibid reg 6(3).

23 Ibid reg 6(4). The court hearing any such application may make an order exempting him from the provisions of the regulations: reg 6(4).

24 Ibid reg 17(1). The Health and Safety Executive will not grant an exemption under reg 17(1) unless, having regard to the circumstances of the case and in particular to the conditions, if any, which it proposes to attach to the exemption and also to any other requirements imposed by or under any enactment which apply to the case, it is satisfied that the health or safety of persons likely to be affected by the exemption will not be prejudiced in consequence of it and the security of explosives will not be so prejudiced: reg 17(2).

25 Ibid reg 17(3).

UPDATE

924-970 Manufacture and Keeping of Explosives

The provisions of the Explosives Act 1875 and subordinate legislation relating to the manufacture and storage of explosives are largely replaced by the Manufacture and Storage of Explosives Regulations 2005, SI 2005/1082: see PARAS 924A-924E.

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

967 Police certificates to keep explosives

NOTE 2--SI 1991/1531 reg 8 amended, Sch 2 substituted: SI 2005/1082.

NOTE 3--SI 1991/1531 reg 2(1) definition of 'chief officer of police' substituted by SI 2009/693.

NOTE 4--Now head (6) where the application is for a certificate relating only to acquisition of explosives, it is not reasonably practicable for the applicant to be an occupier of a site for the storage of explosives for which he would be required under the Manufacture and Storage of Explosives Regulations 2005, SI 2005/1082, to have a licence or be registered in respect of that storage, and the explosives either will not be kept or, if kept, the applicant will ensure that they are kept at a site where such storage is permitted pursuant to a licence or registration or at a site occupied by the Secretary of State for Defence; (7) where the application is for a certificate relating to the keeping of explosives, either (a) the applicant is or is to be the occupier of a site for the storage of explosives in respect of which storage there is or will be a licence or registration in force; or (b) the explosives will be kept at a site occupied on behalf of the Crown; or (c) in the case where the applicant does not hold a licence in respect of the storage of the explosives, no licence is required to be held by the applicant in respect of that storage by virtue of reg 10(2): SI 1991/1531 reg 4(6)(f), (g) (substituted by SI 2005/1082).

TEXT AND NOTES 8, 9--SI 1991/1531 reg 9(1), (2) amended: SI 2005/1082. SI 1991/1531 reg 9 does not apply to a desensitised explosive which is a medicinal product nor a substance specified in an order made under the Medicines Act 1968 s 104 or 105 which is for the time being in force and which directs that specified provisions of the 1968 Act is to have effect in relation to such medicinal products: SI 1991/1531 reg 9(4) (added by SI 2005/1082). For the meaning of 'desensitised explosive' see SI 1991/1531 reg 2(4) (amended by SI 2005/1082). For the meaning of 'medicinal product' see MEDICINAL PRODUCTS AND DRUGS vol 30(2) (Reissue) PARA 7.

TEXT AND NOTE 13--SI 1991/1531 reg 16 revoked: SI 2005/1082.

TEXT AND NOTE 14--Head (1) for 'three years' read 'five years': SI 1991/1531 reg 5(3)(a) (amended by SI 2009/693). Head (2) omitted: SI 1991/1531 reg 5(3)(b) (revoked by SI 2009/693).

Halsbury's Laws of England/EXPLOSIVES (VOLUME 17(2) (REISSUE))/2. MANUFACTURE AND KEEPING OF EXPLOSIVES/(3) SMALL FIREWORK FACTORIES/968. Provision in favour of small firework manufacturer.

(3) SMALL FIREWORK FACTORIES

968. Provision in favour of small firework manufacturer.

The occupier¹ of a small firework factory is not required to obtain a licence for the manufacture of explosives² for that factory if he has obtained a small firework factory licence³. The licensee of a small firework factory who manufactures an explosive (other than nitro-glycerine or any prescribed explosive⁴) for the purpose only of the manufacture of coloured fires or a manufactured firework⁵ in accordance with the Explosives Act 1875, and does not sell it except in the form of coloured fires packed in the manner required by that Act⁶, or of a manufactured firework, is not deemed to manufacture an explosive in an unauthorised place⁷.

A firework factory is not to be deemed a small firework factory if there is upon the factory at the same time (1) more than 50 kg of any explosive other than manufactured fireworks and coloured fires and stars⁸; (2) more than 250 kg of manufactured fireworks, either finished or partly finished⁹; or (3) more than 12 kg of coloured fires or stars not made up into manufactured fireworks¹⁰.

1 For the meaning of 'occupier' see PARA 926 note 1 ante.

2 I.e. a licence under the Explosives Act 1875, Pt I (ss 4-38) (as amended): see PARA 924 et seq ante. See also s 39. For the meaning of 'explosive' see PARA 905 ante.

3 Ibid s 48 (amended by the Fireworks Act 1951 s 7(3)). As to the grant of licences see PARA 951 ante.

4 The manufacture in a small firework factory of any liquid explosive of Division 1 of the nitro-compound class or of any explosive of the fulminate class is prohibited by Order in Council (No 4) dated 27 November 1875, Pt I (amended by SR & O 1923/1299). The manufacture anywhere of fireworks of sulphur and chlorate of potassium or other chlorate, except with the approval of an inspector, is prohibited by Order in Council (No 15), SR & O 1894/517.

5 For the meaning of 'manufactured firework' see PARA 908 note 12 ante.

6 See PARA 989 post.

7 Explosives Act 1875 s 48 (amended by the Fireworks Act 1951 s 7(3)). As to the consequences of manufacture at an unauthorised place see PARA 925 ante.

8 Explosives Act 1975 s 48(a) (s 48(a)-(c) amended by the Explosives Act 1875 etc (Metrication and Miscellaneous Amendment) Regulations 1984, SI 1984/510, reg 2, Sch 1). For the classification of fireworks see PARA 908 ante.

9 Explosives Act 1975 s 48(b) (as amended: see note 8 supra).

10 Ibid s 48(c) (as amended: see note 8 supra).

UPDATE

924-970 Manufacture and Keeping of Explosives

The provisions of the Explosives Act 1875 and subordinate legislation relating to the manufacture and storage of explosives are largely replaced by the Manufacture and Storage of Explosives Regulations 2005, SI 2005/1082: see PARAS 924A-924E.

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

Halsbury's Laws of England/EXPLOSIVES (VOLUME 17(2) (REISSUE))/2. MANUFACTURE AND KEEPING OF EXPLOSIVES/(3) SMALL FIREWORK FACTORIES/969. Grant of a licence.

969. Grant of a licence.

Any person may apply for a small firework factory licence to the Health and Safety Executive¹ at the appointed time and place, stating his name, address and occupation, the proposed site and construction of the factory, and the amount and description of explosive² he proposes to have in the factory and in any building in it³. The Executive must consult with the local authority as to whether the proposed site, construction of the factory and amount of explosive is in accordance with the relevant Order in Council⁴, and if those requirements are satisfied the Executive must, as soon as practicable, grant the licence on payment of the prescribed fee⁵.

A small firework factory licence is valid only for the person named in it, and the provisions with respect to the renewal, expiration and form of store licences⁶, and fees for such renewal, and the special rules for the regulation of persons managing or employed in or about stores⁷, apply mutatis mutandis to small firework factory licences and small firework factories respectively⁸.

1 For the meaning of 'explosive' see PARA 905 ante.

2 As to the Health and Safety Executive see HEALTH AND SAFETY AT WORK vol 52 (2009) PARAS 361-371.

3 Explosives Act 1875 s 49 (amended by the Explosives Acts 1875 and 1923 etc (Repeals and Modifications) Regulations 1974, SI 1974/1885, regs 2(b), 9, Sch 2 para 3).

4 Fireworks Act 1951 s 7(1) proviso.

5 Explosives Act 1875 s 49 (amended by the Explosives Acts 1875 and 1923 etc (Repeals and Modifications) Regulations 1974, SI 1974/1885, reg 2(b), 9, Sch 2 para 3). The fee is such fee, not exceeding 25p, as may be fixed by the Health and Safety Executive: Explosives Act 1875 s 49 (amended by the Decimal Currency Act 1969 s 10(1)). However, the maximum fee may be varied by the Secretary of State: Public Expenditure and Receipts Act 1968 s 5, Sch 3. As to the Secretary of State see PARA 913 ante.

6 See PARAS 954, 955 ante.

7 See PARA 960 ante.

8 Explosives Act 1875 s 49.

UPDATE

924-970 Manufacture and Keeping of Explosives

The provisions of the Explosives Act 1875 and subordinate legislation relating to the manufacture and storage of explosives are largely replaced by the Manufacture and Storage of Explosives Regulations 2005, SI 2005/1082: see PARAS 924A-924E.

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

Halsbury's Laws of England/EXPLOSIVES (VOLUME 17(2) (REISSUE))/2. MANUFACTURE AND KEEPING OF EXPLOSIVES/(3) SMALL FIREWORK FACTORIES/970. General rules.

970. General rules.

Small firework factories are regulated by Order in Council¹, which prescribes certain general rules which must be observed in every such factory². Breach of those rules involves the same penalties as a breach of a general rule relating to stores³.

Small firework factories may have their licences determined if dangerous fireworks are manufactured or the manufacture is negligent⁴.

¹ Order in Council (No 4) dated 27 November 1875 (amended by SR & O 1923/1299; SI 1974/1885; SI 1984/510). Order in Council (No 4) dated 27 November 1875, Pt II (amended by SR & O 1923/1299; SI 1984/510) relates to the site and construction of the factory. If placed at prescribed distances from certain protected works it qualifies to be in Division A; if placed at twice those distances it qualifies to be in Division B: Order in Council (No 4) dated 27 November 1875, Pt III, reg 6 (amended by SR & O 1923/1299; SI 1984/510). The maximum amount of explosive is laid down for each division, being greater in B than in A: see Order in Council (No 4) dated 27 November 1875, Pt III, r 7 (amended by SR & O 1923/1299; SI 1984/510).

² Order in Council (No 4) dated 27 November 1875, Pt III (amended by SR & O 1923/1299; SI 1974/1885).

³ See the Explosives Act 1875 s 49; and PARA 957 ante.

⁴ See PARA 951 note 2 ante (dangerous fireworks); and PARA 952 ante (negligent manufacture).

UPDATE

924-970 Manufacture and Keeping of Explosives

The provisions of the Explosives Act 1875 and subordinate legislation relating to the manufacture and storage of explosives are largely replaced by the Manufacture and Storage of Explosives Regulations 2005, SI 2005/1082: see PARAS 924A-924E.

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

Halsbury's Laws of England/EXPLOSIVES (VOLUME 17(2) (REISSUE))/3. SALE, IMPORTATION, EXPORTATION AND CONVEYANCE/(1) SALE/971. Restrictions on the transfer of explosives.

3. SALE, IMPORTATION, EXPORTATION AND CONVEYANCE

(1) SALE

971. Restrictions on the transfer of explosives.

No person may transfer any explosive¹ to another unless he is satisfied that:

- 55 (1) the transferee has an explosives certificate certifying him to be a fit person to acquire that explosive²;
- 56 (2) the explosive is for immediate export to a transferee resident outside the United Kingdom and any licence relating to the transfer under the relevant statutory provision³ has been granted⁴;
- 57 (3) the explosive is for immediate transport to Northern Ireland and the transferee has police consent under the relevant regulations⁵;
- 58 (4) the explosive is for transport to an offshore installation in controlled waters⁶;
- 59 (5) the transferee is a specified⁷ person⁸.

1 For the meaning of 'explosive' see PARA 931 note 1 ante.

2 Control of Explosives Regulations 1991, SI 1991/1531, reg 8(a).

3 I.e. the Import, Export and Customs Powers (Defence) Act 1939. See also CUSTOMS AND EXCISE vol 12(3) (2007 Reissue) PARA 996.

4 Control of Explosives Regulations 1991, SI 1991/1531, reg 8(b). For the meaning of 'United Kingdom' see PARA 909 note 5 ante.

5 Ibid reg 8(c). Police consent is given under the Explosives Regulations (Northern Ireland) 1970, SR & O (NI) 1970 No 10.

6 Control of Explosives Regulations 1991, SI 1991/1531, reg 8(d). 'Offshore installation' and 'controlled waters' are defined in the Mineral Workings (Offshore Installations) Act 1971 s 1(4) (as substituted).

7 I.e. specified in the Control of Explosives Regulations 1991, SI 1991/1531, reg 3(3), (4): see PARA 931 ante.

8 Ibid reg 8(e).

UPDATE

971-987 Restrictions on the transfer of explosives ... Licences

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

Halsbury's Laws of England/EXPLOSIVES (VOLUME 17(2) (REISSUE))/3. SALE, IMPORTATION, EXPORTATION AND CONVEYANCE/(1) SALE/972. Supply of explosives.

972. Supply of explosives.

With respect to the importation from any place out of the United Kingdom¹ of any explosive², other than explosives of certain kinds³, the following provisions have effect⁴.

No person may supply any explosive (other than gunpowder) unless the explosive (1) conforms in composition, character and quality to the description of the explosive in a list signed by an inspector appointed by the Health and Safety Executive⁵ and duly authorised for that purpose, corresponding to the name of that explosive as shown in such list and in the 'List of Classified and Authorised Explosives' issued by the Health and Safety Executive, such list and List as revised or re-issued from time to time⁶; and (2) has been classified in accordance with any Order in Council⁷ for the time being in force which defines, for the purposes of the Explosives Act 1875, the composition, quality and character of any explosive⁸.

1 Conveyance of explosive from the Isle of Man to any port in the United Kingdom is deemed to be importation into that port and the Customs Acts apply accordingly: Isle of Man Act 1979 s 8(2)(c). For the meaning of 'United Kingdom' see PARA 909 note 5 ante. As to the Customs Acts generally see CUSTOMS AND EXCISE.

2 For the meaning of 'explosive' see PARA 905 ante.

3 Gunpowder is excepted by the Explosives Act 1875 s 40(9).

4 See the Explosives Act 1875 s 40(9) (as substituted: see note 6 infra).

5 As to the Health and Safety Executive see HEALTH AND SAFETY AT WORK vol 52 (2009) PARAS 361-371.

6 Explosives Act 1875 s 40(9)(a) (s 40(9) substituted by the Placing on the Market and Supervision of Transfers of Explosives Regulations 1993, SI 1993/2714, reg 12(1), Sch 4 Pt I).

7 Ie any Order in Council made under the Explosives Act 1875 s 106.

8 Ibid s 40(9)(b) (as substituted: see note 6 supra).

UPDATE

971-987 Restrictions on the transfer of explosives ... Licences

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

972 Supply of explosives

TEXT AND NOTES--Repealed: SI 2005/1082.

Halsbury's Laws of England/EXPLOSIVES (VOLUME 17(2) (REISSUE))/3. SALE, IMPORTATION, EXPORTATION AND CONVEYANCE/(1) SALE/973. Hawking.

973. Hawking.

Explosives¹ may not be hawked, sold or exposed for sale on any highway, street, public thoroughfare or public place². Any person who contravenes this prohibition is liable to a penalty³, and all or any part of the explosive which is so hawked or exposed for sale, or which is found in the possession of the person convicted, may be forfeited⁴.

1 For the meaning of 'explosive' see PARA 905 ante.

2 Explosives Act 1875 s 30. See also s 39. As to hawkers generally see MARKETS, FAIRS AND STREET TRADING; and as to highways and streets see HIGHWAYS, STREETS AND BRIDGES. As to further restrictions imposed on the transfer of explosives see the Control of Explosives Regulations 1991, SI 1991/1531, reg 8; and PARA 971 ante.

3 See the Explosives Act 1875 ss 30(1), 39, 91 (as amended). In relation to the penalty see the Criminal Law Act 1977 s 32(1), specifying a fine of any amount for conviction on indictment; and the Magistrates' Courts Act 1980 s 32 (as amended) (see SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 6), specifying a maximum fine of the prescribed sum on summary conviction. As to the prescribed sum see SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 141; and as to the recovery of penalties see PARA 1031 post.

4 Explosives Act 1875 s 30. See also s 39.

UPDATE

971-987 Restrictions on the transfer of explosives ... Licences

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

973-975 Hawking ... Gunpowder

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

973 Hawking

TEXT AND NOTES--Prospectively repealed: Fireworks Act 2003 Schedule.

Halsbury's Laws of England/EXPLOSIVES (VOLUME 17(2) (REISSUE))/3. SALE, IMPORTATION, EXPORTATION AND CONVEYANCE/(1) SALE/974. Sale to children.

974. Sale to children.

Explosives¹ may not be sold to any person apparently under the age of 16². Any person selling explosives in contravention of this prohibition is guilty of an offence and liable on summary conviction to a fine³.

No person may supply any firework or assembly to a person apparently under the age of 18⁴.

1 For the meaning of 'explosive' see PARA 905 ante.

2 Explosives Act 1875 s 31 (amended by the Explosives (Age of Purchase etc) Act 1976 s 1(1)). See also the Explosives Act s 39.

3 Ibid s 31 (amended by the Consumer Protection Act 1987 s 48(1), Sch 4 para 1). The fine may not exceed level 5 on the standard scale: Explosives Act 1875 s 31 (as so amended). As to the standard scale generally see PARA 951 note 9 ante.

4 See the Fireworks (Safety) Regulations 1997, SI 1997/2294, reg 6; and SALE OF GOODS AND SUPPLY OF SERVICES vol 41 (2005 Reissue) PARA 608.

UPDATE

971-987 Restrictions on the transfer of explosives ... Licences

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

973-975 Hawking ... Gunpowder

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

974 Sale to children

TEXT AND NOTES--Prospectively repealed: Fireworks Act 2003 Schedule. Regulations may be made prohibiting the supply of fireworks to persons who are below a specified age: see s 3; and PARA 980.

Halsbury's Laws of England/EXPLOSIVES (VOLUME 17(2) (REISSUE))/3. SALE, IMPORTATION, EXPORTATION AND CONVEYANCE/(1) SALE/975. Gunpowder.

975. Gunpowder.

All gunpowder exceeding 500 g in weight, when publicly exposed for sale or sold, must be in a substantial case, bag, canister or other receptacle made and closed so as to prevent its escape, and, except when it is sold to a person employed by or on the property occupied by the vendor for immediate use in the service of the vendor or on such property, the outermost receptacle containing the gunpowder must have affixed the word 'gunpowder' in conspicuous characters by means of a brand or securely attached label or other mark¹.

¹ Explosives Act 1875 s 32 (amended by the Explosives Act 1875 etc (Metrication and Miscellaneous Amendment) Regulations 1984, SI 1984/510, reg 2, Sch 1). As to contravention of this provision see PARA 976 post.

UPDATE

971-987 Restrictions on the transfer of explosives ... Licences

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

973-975 Hawking ... Gunpowder

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

975 Gunpowder

TEXT AND NOTES--Prospectively repealed: Fireworks Act 2003 Schedule.

Halsbury's Laws of England/EXPLOSIVES (VOLUME 17(2) (REISSUE))/3. SALE, IMPORTATION, EXPORTATION AND CONVEYANCE/(1) SALE/976. Other explosives.

976. Other explosives.

For the maximum amount¹ of explosives² other than gunpowder to be kept in a store, and for the minimum amount³ to be exposed for sale or sold otherwise than in a substantial case, box, canister or other receptacle, there is substituted the following:

- 60 (1) where such explosive consists of safety cartridges made with gunpowder, an amount containing not more than five times the maximum or minimum amount of gunpowder, as the case may be⁴; and
- 61 (2) in the case of any other explosive, the prescribed amount⁵.

Instead of the word 'gunpowder', the outermost package containing the explosive must be marked with the name of the explosive, and, except in the case of percussion caps and safety fuses for blasting, the word 'explosive'⁶.

If any gunpowder or other explosive is sold or exposed for sale in contravention of the foregoing provisions, the person selling or exposing it is liable to a penalty⁷, and all or any part of the explosive so exposed for sale may be forfeited⁸.

1 le limited by the Explosives Act 1875 Pt I (ss 1-38) (as amended).

2 For the meaning of 'explosive' see PARA 905 ante.

3 le limited by the Explosives Act 1875 Pt I (as amended).

4 Ibid s 40(4)(a) (s 40(4) amended by the Control of Explosives Regulations 1991, SI 1991/1531, reg 19(1), Sch 4 Pt I). See also the Explosives Act 1875 s 39; and Order in Council (No 9) dated 27 November 1875 (amended by SI 1984/510).

5 Explosives Act 1875 s 40(4)(a) (as amended: see note 4 supra). See also s 39; and Order in Council (No 9) dated 27 November 1875 (as amended: see note 4 supra).

6 Explosives Act 1875 s 40(8); Order in Council (No 9) dated 27 November 1875 (as amended: see note 4 supra). See also the Explosives Act 1875 s 39. If the name given is materially false the person selling or exposing for sale such explosive, and also the owner of the explosive is liable to a penalty not exceeding £50: s 40(8). As to the marking for the purposes of conveyance see PARA 989 post.

7 Ibid s 32(1). See also s 39. By virtue of s 91 (as amended), offences under s 32(1) may be tried either summarily or on indictment. The maximum fine which may be imposed on summary conviction is the prescribed sum within the meaning of the Magistrates' Courts Act 1980 s 32(2) (as amended) (see SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 6), and on conviction on indictment the fine may be any amount by virtue of the Criminal Law Act 1977 s 32(1). As to the recovery of penalties see PARA 1031 post.

8 Explosives Act s 32. See also s 39.

UPDATE

971-987 Restrictions on the transfer of explosives ... Licences

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

976 Other explosives

TEXT AND NOTES 1-6--Repealed: SI 2005/1082.

TEXT AND NOTES 7, 8--1875 Act s 32 prospectively repealed: Fireworks Act 2003 Schedule.

NOTE 7--1875 Act s 91 repealed: SI 2005/1082.

Halsbury's Laws of England/EXPLOSIVES (VOLUME 17(2) (REISSUE))/3. SALE, IMPORTATION, EXPORTATION AND CONVEYANCE/(1) SALE/977. Ammunition.

977. Ammunition.

It is an offence to sell or transfer to any person in the United Kingdom, other than a registered firearms dealer, any ammunition (with certain exceptions) unless that person has a firearm certificate authorising the purchase or acquisition of such ammunition or is exempt from holding such a certificate¹.

¹ See the Firearms Act 1968 ss 1(4), 3(2); and CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(2) (2006 Reissue) PARAS 634, 637. For the meaning of 'United Kingdom' see PARA 909 note 5 ante.

UPDATE

971-987 Restrictions on the transfer of explosives ... Licences

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

Halsbury's Laws of England/EXPLOSIVES (VOLUME 17(2) (REISSUE))/3. SALE, IMPORTATION, EXPORTATION AND CONVEYANCE/(1) SALE/978. Specially dangerous explosives.

978. Specially dangerous explosives.

Her Majesty may from time to time, by Order in Council¹, prohibit, either absolutely, or except in pursuance of a licence of the Health and Safety Executive², or may subject to conditions or restrictions, the sale of any explosive³ which is of so dangerous a character that it is expedient for the public safety to make such an order⁴, provided that such an order does not absolutely prohibit anything which may be lawfully done in pursuance of any continuing certificate⁵ under the Explosives Act 1875⁶.

If any explosive is sold in contravention of any such order, the person to whom it was delivered and the person selling the same are each guilty of an offence⁷.

1 Orders in Council made under the Explosives Act 1875 s 43 (as amended: see *infra*) prohibit the sale of (1) fireworks consisting of or containing sulphur mixed with chlorate of potassium or other chlorates unless sold with the consent of and subject to conditions approved by an inspector (Order in Council (No 15), SR & O 1894/517); (2) fireworks containing a mixture of phosphorus (whether or not in the amorphous form) with chlorate of potassium or other chlorate unless they are specially licensed by the Health and Safety Executive for manufacture or importation and are named and defined in the list of classified and authorised explosives (Order in Council (No 19), SR & O 1905/8 (amended by SI 1974/1885)); and (3) acetylene when deemed an explosive within the meaning of the Explosives Act 1875 (Order in Council (No 30), SR & O 1937/54 (amended by SR & O 1947/805; SI 1974/1885; SI 1984/510)). As to the Health and Safety Executive see HEALTH AND SAFETY AT WORK vol 52 (2009) PARAS 361-371. As to the additional conditions imposed on the transfer of explosives by virtue of the Control of Explosives Regulations 1991, SI 1991/1531, see PARA 971 *ante*.

2 I.e. a licence under the Explosives Act 1875.

3 For the meaning of 'explosive' see PARA 905 *ante*.

4 Explosives Act 1875 s 43 (amended by the Explosives Acts 1875 and 1923 etc (Repeals and Modifications) Regulations 1974, SI 1974/1855, regs 2(b), 9, Sch 2 paras 3, 15).

5 See PARA 928 *ante*.

6 Explosives Act 1875 s 43 proviso.

7 *Ibid* s 43 (as amended: see note 4 *ante*). Such a person is liable to the penalties specified in the Health and Safety at Work etc Act 1974 s 33(3) (as amended) (see HEALTH AND SAFETY AT WORK vol 52 (2009) PARA 853): Explosives Act 1875 s 43 (as so amended).

UPDATE

971-987 Restrictions on the transfer of explosives ... Licences

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

978 Specially dangerous explosives

NOTES--Certain persons or indorsements mentioned in this paragraph are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

TEXT AND NOTE 4--1875 Act s 43 further amended: SI 2005/1082.

Halsbury's Laws of England/EXPLOSIVES (VOLUME 17(2) (REISSUE))/3. SALE, IMPORTATION, EXPORTATION AND CONVEYANCE/(1) SALE/979. Records.

979. Records.

Any person who acquires possession of or keeps any explosive¹ must make and maintain an up to date record². The record must be preserved by the person responsible for making it in a safe place for a period of three years from the end of the year during which the latest entry was made³. A constable may, for the purposes of investigating any offence which has, or which he has reasonable grounds for suspecting has, been committed, require a person responsible for preserving records to produce all or any of them immediately, and the constable may inspect and take copies of them⁴.

1 For the meaning of 'explosive' see PARA 931 note 1 ante.

2 Control of Explosives Regulations 1991, SI 1991/1531, reg 12(1). Regulation 12 does not apply to (1) a person who acquires or keeps for private use not more than 10 kg of gunpowder, plus 5 kg of gunpowder or smokeless powder or of any propellant made or adapted and also, in either case, intended exclusively for small arms ammunition; (2) unfinished explosive when it enters or leaves the factory (explosive is not to be treated as unfinished only because it has not been packaged or labelled: reg 12(5)); (3) an explosive which is manufactured in accordance with a licence issued under the Ammonium Nitrate Mixtures Exemption Order 1967, SI 1967/1485 (amended by SI 1984/510), and is used immediately at the point of manufacture: Control of Explosives Regulations 1991, SI 1991/1531, reg 12(4). For explosives to which reg 12 applies see reg 3(1); and as to the enforcing authority see reg 15(2).

The record must contain such of the information specified in Sch 3 as applies in the case: reg 12(1).

3 Ibid reg 12(2) (amended by SI 1993/2714). Where any employer or self-employed person is required to preserve records by virtue of the Control of Explosives Regulations 1991, SI 1991/1531, reg 12(2) and ceases to trade, he must forthwith notify the authority which is the enforcing authority in respect of reg 12 and must offer such records to the authority: reg 12(2A) (added by SI 1993/2714).

4 Control of Explosives Regulations 1991, SI 1991/1531, reg 12(3).

UPDATE

971-987 Restrictions on the transfer of explosives ... Licences

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

979 Records

NOTE 2--SI 1991/1531 reg 15(2) amended: SI 2009/693.

Halsbury's Laws of England/EXPLOSIVES (VOLUME 17(2) (REISSUE))/3. SALE, IMPORTATION, EXPORTATION AND CONVEYANCE/(1) SALE/980. Fireworks.

980. Fireworks.

If any person in the course of a trade or business sells, or offers or exposes for sale, any fireworks and a name or address put on them¹ has been removed, obliterated or altered, he is, on summary conviction, liable to a fine². It is, however, a defence to prove that the removal, obliteration or alteration was such as the defendant could not reasonably have been expected to observe³, or that the fireworks were in a container unopened since it came into the defendant's possession⁴, or that the removal, obliteration or alteration was not for the purpose of concealing the identity of the maker, or, as the case may be, of the importer, of the fireworks⁵.

Regulations govern generally the supply of certain fireworks and assemblies, by reference to the classification of the fireworks, impose additional marking requirements on certain fireworks, and prohibit the splitting of packs of fireworks for supply⁶.

1 le a name and address put on the fireworks in pursuance of the Fireworks Act 1951 s 5. See PARA 1015 post.

2 Ibid s 6 (amended by virtue of the Criminal Justice Act 1982 ss 38, 46). The fine may not exceed level 2 on the standard scale. As to the standard scale see PARA 951 note 9 ante.

3 Fireworks Act 1951 s 6 proviso (a).

4 Ibid s 6 proviso (b).

5 Ibid s 6 proviso (c). As to the importer's mark which an importation licence has required to be placed on fireworks see also PARA 982 post.

6 See the Fireworks (Safety) Regulations 1997, SI 1997/2294, regs 4-8; and SALE OF GOODS AND SUPPLY OF SERVICES vol 41 (2005 Reissue) PARA 605 et seq.

UPDATE

971-987 Restrictions on the transfer of explosives ... Licences

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

980 Fireworks

TEXT AND NOTES--Fireworks regulations (see PARA 908A.1) may include provision prohibiting persons from supplying, or offering or agreeing to supply, fireworks, or fireworks of a description specified in the regulations, to persons who are below a specified age: Fireworks Act 2003 s 3(1). For the meaning of 'fireworks' see PARA 908A.1 NOTE 1. References in the 2003 Act to supplying fireworks include (1) selling them; (2) exchanging them for any consideration other than money; and (3) giving them as a prize or otherwise making a gift of them, but do not include supplying them otherwise than in the course of a business: s 1(3). Fireworks regulations may include provision prohibiting the purchase or possession of fireworks, or fireworks of a description specified in the regulations, by persons who are below an age so specified:

s 3(2). If fireworks regulations impose any prohibition by virtue of s 3, they may contain exceptions from the prohibition, or contain provision for the granting of dispensations from the prohibition: s 3(3). The power to make regulations under s 3 or 4(2) applies to explosives other than fireworks as it does to fireworks; and regulations so made are fireworks regulations for all the purposes of the 2003 Act: s 14(1). For these purposes, 'explosives' has the same meaning as in the Explosives Act 1875 (see PARA 905): 2003 Act s 14(2). In the exercise of her powers under s 3, the Secretary of State has made the Fireworks Regulations 2004, SI 2004/1836, which prohibit, subject to exceptions, a person under the age of 18 from possessing an adult firework in a public place: regs 4(1), 6. 'Public place' includes any place to which at the material time the public have or are permitted access, whether on payment or otherwise: reg 4(2). 'Adult firework' means any firework which does not comply with the relevant requirements of Pt 2 of BS 7114 when tested in accordance with the appropriate test method (if any) in Pt 3 of BS 7114, or any firework, except for a cap, cracker snap, novelty match, party popper, serpent, sparkler or throwdown, which does comply with those requirements: reg 3. For the meaning of 'cap', 'cracker snap', 'novelty match', 'party popper', 'serpent', 'sparkler' and 'throwdown' see SALE OF GOODS AND SUPPLY OF SERVICES vol 41 (2005 Reissue) PARA 605.

Fireworks regulations may include provision prohibiting persons from supplying, purchasing, possessing or using fireworks, or fireworks of a description specified in the regulations, during hours of the day so specified: Fireworks Act 2003 s 4(1). Fireworks regulations may include provision prohibiting persons from supplying, exposing for supply, purchasing, possessing or using fireworks, or fireworks of a description specified in the regulations in places or places of a description, or in circumstances, specified in the regulations: s 4(2). If fireworks regulations impose any prohibition by virtue of s 4, they may contain exceptions from the prohibition, or contain provision for the granting of dispensations from the prohibition: s 4(3). In the exercise of these powers, the Secretary of State has made SI 2004/1836, which prohibits, subject to exceptions, any person from using an adult firework during night hours: reg 7(1), (2). 'Night hours' means the period beginning at 11 pm and ending at 7 am the following day: reg 7(3) (amended by SI 2004/3262).

Fireworks regulations may include provision prohibiting persons from supplying, or offering or agreeing to supply, fireworks of a description specified in the regulations, or prohibiting persons from supplying, or offering or agreeing to supply, fireworks of a description specified in the regulations to persons of a description so specified: Fireworks Act 2003 s 5(1). Fireworks regulations may include provision prohibiting the purchase or possession of fireworks of a description specified in the regulations, or prohibiting the purchase or possession of fireworks of a description specified in the regulations by persons of a description so specified: s 5(2). Section 5(1), (2) does not apply to class I and class II fireworks: s 5(3). The descriptions of persons which may be specified in fireworks regulations by virtue of s 5(1) or (2) include in particular persons who do not satisfy any conditions which are specified in the regulations and relate to any of certain specified matters: s 5(4). Those matters are (a) the satisfactory completion of a course, or courses, of training relating to fireworks (see PARA 908A.3) and the means of proving the satisfactory completion of such a course or courses; (b) proficiency or experience in the use of fireworks and the means of proving such proficiency or experience; and (c) the possession of insurance cover against liability arising from the use of fireworks and the means of proving possession of such cover: s 5(5). If fireworks regulations impose any prohibition by virtue of s 5, they may contain exceptions from the prohibition, or contain provision for the granting of dispensations from the prohibition: s 5(6). In the exercise of these powers, the Secretary of State has made SI 2004/1836, which prohibits, subject to exceptions, a person from possessing a category 4 firework (regs 5, 6), and prohibit a person from supplying, or offering or

agreeing to supply, a category 3 firework which, when used, exceeds a specified noise threshold (reg 8). A 'category 4 firework' means a firework classified as category 4 under BS 7114; and a 'category 3 firework' means a firework classified as category 3 under BS 7114: reg 3.

Fireworks regulations may include provision prohibiting persons, or persons of a description specified in the regulations, from supplying, exposing for supply or possessing for supply fireworks, or fireworks of a description so specified, unless they are licensed in accordance with the regulations, and the fireworks are supplied, exposed for supply or kept at premises which are so licensed: Fireworks Act 2003 s 7(1). If fireworks regulations impose any prohibition by virtue of s 7(1), they may contain provision (i) specifying the local or other authority by which a licence relating to any person or premises may be granted, varied and revoked; (ii) relating to the grant, variation and revocation of licences; (iii) about conditions which may be attached to licences (including, in particular, conditions as to the time of year for which persons or premises are licensed); (iv) for the charging of fees for the grant or variation of licences, and (v) about appeals against refusals to grant or vary, or variations of, licences: s 7(2). The provision that may be contained in fireworks regulations by virtue of s 7(1) includes, in particular, provision that a person may not be licensed unless any conditions which are specified in the regulations are satisfied by the person or his employees (or both): s 7(3). Those conditions may include conditions relating to the satisfactory completion of a course, or courses, of training about fireworks and the means of proving the satisfactory completion of such course or courses: s 7(4). If fireworks regulations impose any prohibition by virtue of s 7, they may contain exceptions from the prohibition, or contain provision for the granting of dispensations from the prohibition: s 7(5). In the exercise of these powers, the Secretary of State has made SI 2004/1836, which prohibits, subject to exceptions, any person from supplying or exposing for supply any adult firework except in accordance with a licence granted under reg 9: reg 9(1), (2), (2A) (reg 9(1) substituted, reg 9(2A) added by SI 2004/3262). An application for a licence under reg 9 must be made to the local licensing authority in whose area (A) the premises concerned are located in the case of a licence granted in respect of each premises under the applicant's control at which the fireworks are supplied or exposed for supply; or (B) the principal business premises of the applicant are located in the case of a licence granted to him, if the fireworks which he supplies or exposes for supply are kept at premises which are not under his control: reg 9(3) (substituted by SI 2004/3262). 'Local licensing authority' means, in relation to (i) the City of London, the Common Council for the City of London; (ii) an area in the rest of London, the London borough council for that area; (iii) an area where there is a fire and civil defence authority, that authority; (iv) the Isles of Scilly, the Council of the Isles of Scilly; (v) an area in the rest of England, the county council for that area or, where there is no county council for that area, the district council for that area; and (vi) an area in Wales, the county council or the county borough council for that area: reg 3. A local licensing authority must not grant a licence unless it is satisfied in the case of an application under head (A), that the premises are licensed or registered in accordance with the Explosives Act 1875 (see PARA 927); or in the case of an application under head (B), that the fireworks which will be supplied or exposed for supply by the applicant, will be kept at premises which are licensed or registered in accordance with the 1875 Act: SI 2004/1836 reg 9(4) (substituted by SI 2004/3262). A local licensing authority may refuse to grant a licence, or may revoke a licence which it has granted, if the applicant has committed an offence under the Fireworks Act 2003 s 11 (see PARA 1021), an offence under the Consumer Protection Act 1987 s 12 arising from a contravention of the Fireworks (Safety) Regulations 1997, SI 1997/2294, (see SALE OF GOODS AND SUPPLY OF SERVICES vol 41 (2005 Reissue) PARAS 540, 611), an offence under the Explosives Act 1875 s 4 (see PARA 926), 5 or 32 (see PARAS 975, 976), or an offence in relation to the use, storage or keeping of fireworks under the Health and

Safety at Work etc Act 1974 (see PARA 1017): SI 2004/1836 reg 9(5). Where a local licensing authority refuses to grant a licence, or revokes a licence, it must notify the applicant of its decision: reg 9(6). A local licensing authority must charge a fee of £500 a year in connection with the grant of a licence under reg 9: reg 9(7) (substituted by SI 2004/3262). A person may appeal to a magistrates' court against a decision of a local licensing authority to refuse to grant him a licence, or to revoke a licence, and any such appeal must be made within 28 days of the decision in question being notified to that person: reg 9(8).

NOTES--Certain persons or indorsements mentioned in this paragraph are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/EXPLOSIVES (VOLUME 17(2) (REISSUE))/3. SALE, IMPORTATION, EXPORTATION AND CONVEYANCE/(2) IMPORTATION/981. Placing explosives on the market.

(2) IMPORTATION

981. Placing explosives on the market.

No person may place any explosives¹ on the market² unless:

- 62 (1) the explosives satisfy such of the essential safety requirements as apply to those explosives³;
- 63 (2) the conformity of the explosives to the requirements of the Placing on the Market and Supervision of Transfers of Explosives Regulations 1993 has been attested⁴; and
- 64 (3) the CE⁴ marking has been affixed to the explosives⁵.

Before any explosives are transferred, the consignee must obtain from the competent authority⁶ for the place where the transfer will terminate, a recipient competent authority document⁷ which grants approval for the transfer⁸.

No person may:

- 65 (a) consign any explosives for carriage to a place outside Great Britain unless the approval of the relevant authority has been obtained⁹;
- 66 (b) consign any explosives for carriage unless he is satisfied that the consignee has the required¹⁰ recipient competent authority document¹¹;
- 67 (c) carry explosives unless the explosives are accompanied by the required¹² recipient competent authority document or a copy of that document certified by or on behalf of the consignee to be a true copy thereof¹³.

These provisions¹⁴ do not apply to the transfer of any component of small arms ammunition by a person for his own sporting or other recreational use and not for sale, or to the transfer of such component following which the component is in the possession of a person for such persons¹⁵.

The Health and Safety Executive is the enforcing authority for the provisions of the Placing on the Market and Supervision of Transfers of Explosives Regulations 1993¹⁶.

The Secretary of State¹⁷ may from time to time appoint in writing such qualified bodies as he thinks fit to be notified bodies for the purposes of the Placing on the Market and Supervision of Transfers of Explosives Regulations 1993¹⁸.

1 'Explosives' means explosive articles or explosive substances which have been assigned on classification in accordance with the Classification and Labelling of Explosives Regulations 1983, SI 1983/1140, reg 2(1) to Class 1: Placing on the Market and Supervision of Transfers of Explosives Regulations 1993, SI 1993/2714, reg 2(1).

2 For the purposes of the Placing on the Market and Supervision of Transfers of Explosives Regulations 1993, SI 1993/2714, explosives are placed on the market when they are first supplied or made available to any person with a view to their distribution or use within the Communities or are imported, except with a view to re-export, from outside the Communities, and 'place on the market' is construed accordingly: reg 4(4).

3 Ibid reg 4(1)(a). Explosives may be treated as satisfying the essential safety requirements if they conform to any relevant national standard: reg 4(2). 'National standard' means a standard of a member state (1) which

transposes a relevant harmonised standard; and (2) the reference number of which has been published by that member State pursuant to the Civil Uses Directive, Art 4.1: Placing on the Market and Supervision of Transfers of Explosives Regulations 1993, SI 1993/2714, reg 4(3). The 'Civil Uses Directive' means EC Council Directive 93/15 (OJ L121, 15.5.93, p 20) on the harmonisation of the provisions relating to the placing on the market and supervision of explosives for civil uses: Placing on the Market and Supervision of Transfers of Explosives Regulations 1993, SI 1993/2714, reg 2(1).

4 Ibid reg 4(1)(b). As to the procedure for attesting conformity of explosives to the requirements of these regulations see reg 5.

5 Ibid reg 4(1)(c). As to the CE marking see reg 7.

6 'Competent authority' means (1) in respect of Great Britain, the Health and Safety Executive; and (2) in respect of Northern Ireland or a place in the territory of a member State other than the United Kingdom, the authority whose responsibilities are specified in the Civil Uses Directive, Art 9: Placing on the Market and Supervision of Transfers of Explosives Regulations 1993, SI 1993/2714, reg 8(9). For the meaning of 'United Kingdom' see PARA 909 note 5 ante. As to the Health and Safety Executive see HEALTH AND SAFETY AT WORK vol 52 (2009) PARAS 361-371.

7 'Recipient competent authority document' means a document issued in accordance with the Civil Uses Directive, Art 9.3, 9.5, 9.6 by the competent authority of the member State in which the transfer will terminate: Placing on the Market and Supervision of Transfers of Explosives Regulations 1993, SI 1993/2714, reg 8(9). 'Transfer' means any physical movement of explosives apart from movement within one site: reg 8(9). The consignee of any explosives must retain the recipient competent authority document or a copy of it for a period of three years from the completion of the transfer: reg 8(6).

8 Ibid reg 8(1). Except as part of a transfer carried out in accordance with reg 8, the importation of explosives into the United Kingdom is prohibited: reg 8(8).

9 Ibid reg 8(2).

10 See note 7 supra.

11 Placing on the Market and Supervision of Transfers of Explosives Regulations 1993, SI 1993/2714, reg 8(3).

12 See note 7 supra.

13 Placing on the Market and Supervision of Transfers of Explosives Regulations 1993, SI 1993/2714, reg 8(4).

14 Ie ibid reg 8: see text and notes 6-13 supra and 15 infra.

15 Ibid reg 8(7).

16 See ibid reg 9. The Health and Safety Executive may also, by certificate in writing, exempt any person or class of persons or any activity or class of activity from any requirement imposed by these regulations and any such exemption may be granted subject to conditions and to a time limit and may be revoked by a certificate in writing at any time: reg 11(1). No such exemption may be granted unless regard is given to the circumstances of the case: see reg 11(2).

17 As to the Secretary of State see PARA 913 ante.

18 Placing on the Market and Supervision of Transfers of Explosives Regulations 1993, SI 1993/2714, reg 6(1). An appointment under reg 6 may relate to all or any description or class of explosives, may be subject to conditions or to time limits, and may be revoked in writing at any time: reg 6(2).

UPDATE

971-987 Restrictions on the transfer of explosives ... Licences

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

Halsbury's Laws of England/EXPLOSIVES (VOLUME 17(2) (REISSUE))/3. SALE, IMPORTATION, EXPORTATION AND CONVEYANCE/(2) IMPORTATION/982. Fireworks.

982. Fireworks.

In order that imported fireworks in the possession of the public can be traced to the importer, the Secretary of State¹ may annex to the importation licence requirements as to the marking, whether before or after importation, of the fireworks or their containers similar to those as to the marking of fireworks manufactured in the United Kingdom with the name and address of the maker².

¹ As to the Secretary of State see PARA 913 ante.

² See the Fireworks Act 1951 s 5(5). Cf para 1015 post. For the meaning of 'United Kingdom' see PARA 909 note 5 ante.

See also the Fireworks (Safety) Regulations 1997, SI 1997/2294; and SALE OF GOODS AND SUPPLY OF SERVICES vol 41 (2005 Reissue) PARA 604 et seq.

UPDATE

971-987 Restrictions on the transfer of explosives ... Licences

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

982 Fireworks

TEXT AND NOTES--Replaced. Fireworks regulations (see PARA 908A.1) may include provision prohibiting persons from (1) importing; (2) completing the manufacture of; or (3) placing on the market, fireworks, or fireworks of a description specified in the regulations, unless they have complied with any requirement imposed by the regulations for the giving of information: Fireworks Act 2003 s 9(1). For the meaning of 'fireworks' see PARA 908A.1 NOTE 1. If fireworks regulations impose any prohibition by virtue of head (2), they must specify the circumstances in which a person completes the manufacture of fireworks: s 9(2)(a). If fireworks regulations impose any prohibition by virtue of head (3), they must specify the circumstances in which a person places fireworks on the market: s 9(2)(b). If fireworks regulations impose any prohibition by virtue of s 9, they may contain exceptions from the prohibition, or contain provision for the granting of dispensations from the prohibition: s 9(3). If fireworks regulations impose any prohibition by virtue of s 9, they may contain provision requiring the keeping of records by any person to whom information is given under the regulations: s 9(4). In the exercise of these powers, the Secretary of State has made the Fireworks Regulations 2004, SI 2004/1836, which prohibit any person from importing a firework unless he has given to the Commissioners of Customs and Excise (a) his name and address; (b) the name of the person who is to store the fireworks following their importation; and (c) the address of the premises at which the fireworks are to be stored following their importation: reg 11.

Halsbury's Laws of England/EXPLOSIVES (VOLUME 17(2) (REISSUE))/3. SALE, IMPORTATION, EXPORTATION AND CONVEYANCE/(2) IMPORTATION/983. Ammunition, gunpowder etc.

983. Ammunition, gunpowder etc.

The Secretary of State has a general power to regulate all imports by order.¹

Ammunition cannot be brought from the Channel Islands except under licence of the Secretary of State².

¹ See the Import, Export and Customs Powers (Defence) Act 1939 s 1(1); TRADE AND INDUSTRY vol 97 (2010) PARA 808; and CUSTOMS AND EXCISE vol 12(3) (2007 Reissue) PARA 996. As to the control of imports generally see TRADE AND INDUSTRY vol 97 (2010) PARA 808 et seq. As to the Secretary of State see PARA 913 ante.

² Import of Goods (Control) Order, 1954, SI 1954/23, arts 1, 2, 3(b); Secretary of State for Trade and Industry Order 1970, SI 1970/1537, art 2(1).

UPDATE

971-987 Restrictions on the transfer of explosives ... Licences

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

Halsbury's Laws of England/EXPLOSIVES (VOLUME 17(2) (REISSUE))/3. SALE, IMPORTATION, EXPORTATION AND CONVEYANCE/(2) IMPORTATION/984. Specially dangerous explosives.

984. Specially dangerous explosives.

The Explosives Act 1875 enables Her Majesty, by Order in Council, to prohibit either absolutely or except under licence from the Health and Safety Executive¹, or to subject to conditions or restrictions, the importation of any explosive so dangerous that it is expedient for public safety that an order be made² provided that such an order does not absolutely prohibit anything which may be lawfully done in pursuance of any continuing certificate³ under the Explosives Act 1875⁴. Under this power the import of fireworks generally has been made subject to licence⁵.

1 As to the Health and Safety Executive see HEALTH AND SAFETY AT WORK vol 52 (2009) PARAS 361-371.

2 Explosives Act 1875 s 43.

3 As to continuing certificates see PARA 928 ante.

4 Explosives Act 1875 s 43 proviso.

The Commissioners of Customs and Excise and their officers have the same powers in relation to such explosives, and the ship containing them, as they have in respect of any article prohibited to be imported by customs and excise legislation, or in respect of a ship containing any such article; the law in relation to customs and excise applies accordingly: s 43 (amended by the Customs and Excise Management Act 1979 s 177(1), Sch 4 paras 1, 12). As to the Commissioners of Customs and Excise generally see CUSTOMS AND EXCISE.

5 See PARA 978 note 1 ante. The orders there cited apply mutatis mutandis to importation.

UPDATE

971-987 Restrictions on the transfer of explosives ... Licences

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

984 Specially dangerous explosives

NOTES--Certain persons or indorsements mentioned in this paragraph are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

TEXT AND NOTE 1--Words 'either absolutely ... Executive' omitted: 1875 Act s 43 (amended by SI 2005/1082).

TEXT AND NOTES 3, 4--Words 'provided ... 1875' omitted: 1875 Act s 43 (amended by SI 2005/1082).

Halsbury's Laws of England/EXPLOSIVES (VOLUME 17(2) (REISSUE))/3. SALE, IMPORTATION, EXPORTATION AND CONVEYANCE/(2) IMPORTATION/985. Isle of Man.

985. Isle of Man.

Where any restriction is for the time being in force under the Explosives Act 1875 on the unloading or landing of any explosive, removal of the explosive¹ from the Isle of Man to the United Kingdom is deemed to be importation so as to require a licence².

1 For the meaning of 'explosive' see PARA 905 ante.

2 See the Isle of Man Act 1979 s 8(2)(c). For the meaning of 'United Kingdom' see PARA 909 note 5 ante.

UPDATE

971-987 Restrictions on the transfer of explosives ... Licences

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

985 Isle of Man

TEXT AND NOTES--See also 1979 Act s 8(2)(d); and CUSTOMS AND EXCISE vol 12(2) (2007 Reissue) PARA 951.

Halsbury's Laws of England/EXPLOSIVES (VOLUME 17(2) (REISSUE))/3. SALE, IMPORTATION, EXPORTATION AND CONVEYANCE/(3) EXPORTATION/986. Customs clearance.

(3) EXPORTATION

986. Customs clearance.

No explosive¹ within the meaning of the Explosives Act 1875 may be loaded into any ship² or aircraft for exportation, exported by land or shipped for carriage coastwise as cargo until due entry has been made in such form and manner and with such particulars as the Commissioners of Customs and Excise direct³. Omission of such entry makes the goods liable to forfeiture and the exporter or shipper liable, on summary conviction, to a penalty⁴.

1 For the meaning of 'explosive' see PARA 905 ante.

2 For this purpose 'ship' includes a hovercraft: Hovercraft Act 1968 s 3, Schedule (as amended) (see SHIPPING AND MARITIME LAW vol 93 (2008) PARA 384).

3 Customs and Excise Management Act 1979 s 75(1). As to entry outwards see CUSTOMS AND EXCISE vol 12(3) (2007 Reissue) PARA 1006 et seq.

4 Ibid s 75(2). The penalty may not exceed level 3 on the standard scale: s 75(2) (amended by virtue of the Criminal Justice Act 1982 ss 38, 46). As to the standard scale see PARA 951 note 9 ante.

UPDATE

971-987 Restrictions on the transfer of explosives ... Licences

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

986 Customs clearance

TEXT AND NOTE 2--Reference to Explosives Act 1875 is now to Manufacture and Storage of Explosives Regulations 2005, SI 2005/1082 (see PARAS 924A-924E): 1979 Act s 75(1) (amended by SI 2005/1082).

Halsbury's Laws of England/EXPLOSIVES (VOLUME 17(2) (REISSUE))/3. SALE, IMPORTATION, EXPORTATION AND CONVEYANCE/(3) EXPORTATION/987. Licences.

987. Licences.

Explosives¹ as defined in the Explosives Act 1875 are among goods the export of which is prohibited except under licence of the Secretary of State²; but this does not apply to ammunition covered by (1) a valid firearm certificate which is produced to a customs officer on departure³; or (2) a European firearms pass⁴ which complies with certain conditions⁵.

1 For the meaning of 'explosive' see PARA 905 ante.

2 See the Export of Goods (Control) Order 1994, SI 1994/1191, art 2 Sch 1 Pt III Group 1 (as amended). As to the Secretary of State see PARA 913 ante.

3 See *ibid* art 3(1)(e)(ii) (amended by SI 1994/2711; 1997/2758). As to the control of movement of ammunition see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(2) (2006 Reissue) PARA 667.

4 I.e. a pass issued under the Firearms Act 1968 s 32A (added by the Firearms Acts (Amendment) Regulations 1992, SI 1992/2823) (see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(2) (2006 Reissue) PARA 687) or provisions of the law of a member state corresponding thereto: Export of Goods (Control) Order 1994, SI 1994/1191, art 3(1)(e)(i)(aa).

5 See *ibid* art 3(1)(e)(i) (amended by SI 1994/2711).

UPDATE

971-987 Restrictions on the transfer of explosives ... Licences

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

987 Licences

NOTES--SI 1994/1191 lapsed. See now Export Control Order 2008, SI 2008/3231; and TRADE AND INDUSTRY vol 97 (2010) PARA 817 et seq.

Halsbury's Laws of England/EXPLOSIVES (VOLUME 17(2) (REISSUE))/3. SALE, IMPORTATION, EXPORTATION AND CONVEYANCE/(3) EXPORTATION/988. Isle of Man.

988. Isle of Man.

Goods removed from the United Kingdom to the Isle of Man are for customs purposes deemed not to be exported, and this provision applies to explosives¹.

¹ See the Isle of Man Act 1979 ss 8(1), 9(1) (s 9(1) as amended) (see CUSTOMS AND EXCISE vol 12(3) (2007 Reissue) PARA 1002). For the meaning of 'explosive' see PARA 905 ante. For the meaning of 'United Kingdom' see PARA 909 note 5 ante.

Halsbury's Laws of England/EXPLOSIVES (VOLUME 17(2) (REISSUE))/3. SALE, IMPORTATION, EXPORTATION AND CONVEYANCE/(4) CONVEYANCE/(i) Packing and Marking/989. Packing and marking.

(4) CONVEYANCE

(i) Packing and Marking

989. Packing and marking.

No person may consign explosives¹ for carriage or knowingly carry explosives unless they are in packagings which comply with the following regulations². All packagings must be designed and constructed so that (1) they will protect the explosives, prevent them escaping and cause no increased risk of unintended ignition when subjected to normal conditions of carriage including foreseeable changes to temperature, humidity and pressure³; (2) the complete package can be handled safely in normal conditions of carriage⁴; (3) the packagings are able to withstand any loading imposed on them by foreseeable stacking to which they will be subject during carriage so that they do not add to the risk presented by the explosives, the packagings' containment function is not harmed and they are not distorted in a way or to an extent which will reduce their strength or cause instability of a stack⁵; (4) any inner packagings and the interior of all outer packagings are free from grit and rust⁶; (5) they do not contain or have attached to them any incompatible material, that is to say any material which, if it came into contact with the explosive substance would be capable of reacting with the explosive substance in a way which would increase the risk of unintended ignition⁷. Packagings must be of materials suitable for their purpose and which are so designed and of sufficient quality as to allow explosives to be carried safely and which are compatible with the explosives to be carried⁸. Packages of net mass not exceeding 400 kg must be packed by the specified method for explosives of that UN number in the United Nations Recommendations⁹ and be of a design type tested by an approved testing laboratory¹⁰ using tests approved by the competent authority, which that competent authority has certified as having satisfactorily completed such tests and to which he has allocated a UN mark¹¹.

Packages of explosives whose net mass does not exceed 400 kg must be marked with the UN mark allocated by the competent authority for that design type of packaging¹². Packing for explosives of a net mass exceeding 400 kg must either have been successfully tested at an approved laboratory in accordance with standards imposed by the Health and Safety Executive and be registered with them or the Secretary of State, or have been tested to the satisfaction of a competent authority outside Great Britain¹³.

The Health and Safety Executive may, by a certificate in writing, exempt any individual or class of person, explosives, package or packagings from all or any of the requirements or prohibitions imposed; such exemption may be granted subject to conditions and to a time limit and may be revoked by a certificate at any time¹⁴. The Health and Safety Executive must not grant any exemption unless, with regard to the circumstances of the case and in particular to the conditions, if any, which it proposes to attach to the exemption and any other requirements imposed by or under any enactment which apply to the case, it is satisfied that neither the health and safety of persons who are likely to be affected by the exemption nor the security of the explosives will be prejudiced¹⁵. The Secretary of State having responsibility for defence may, in the interests of national security, exempt, by a certificate in writing, any military explosive, any person engaged in the packaging of military explosive, any packagings used for military explosives or any class of any of the foregoing, from all or any of the requirements or prohibitions imposed¹⁶, and any such exemption may be granted subject to conditions and to a time limit and may be revoked by a certificate in writing at any time¹⁷.

1 'Explosives' means explosive articles or explosive substances which (1) have been assigned on classification in accordance with the Classification and Labelling of Explosives Regulations 1983, SI 1983/1140 (as amended) (see PARA 904 ante), to Class 1; or (2) have not been classified under the Classification and Labelling of Explosives Regulations 1983, SI 1983/1140 (as amended), or under the Carriage of Dangerous Goods (Classification, Packaging and Labelling) and Use of Transportable Pressure Receptacles Regulations 1996, SI 1996/2092, reg 5: Packaging of Explosives for Carriage Regulations 1991, SI 1991/2097, reg 2(1) (amended by SI 1996/2092). 'Explosive article' means an article containing one or more explosive substance: Packaging of Explosives for Carriage Regulations 1991, SI 1991/2097, reg 2(1). 'Explosive substance' means a solid or liquid substance, or a mixture of solid or liquid substances or both, which is capable by chemical reaction in itself of producing gas at such a temperature and pressure and at such a speed as could cause damage to surroundings or which is designed to produce an effect by heat, light, sound, gas or smoke or a combination of these as a result of non-detonative self-sustaining exothermic chemical reactions: reg 2(1).

The Health and Safety Executive is the enforcing authority for the purposes of the regulations: see reg 12. As to the Health and Safety Executive see HEALTH AND SAFETY AT WORK vol 52 (2009) PARAS 361-371.

2 Ibid reg 4(1), (2). For the purposes of reg 4(2), packages are taken to comply with regs 7-9 if they are marked with a UN mark (see note 11 infra) and the person carrying the explosives does not know and has no reason to believe either that the packagings are not of the design type indicated by the UN mark or that the explosives are not of a quantity and description which may be carried in packagings of the design type indicated by the UN mark: reg 4(3). All packagings used in or in connection with the carriage of explosives must be adequately maintained: reg 4(4). 'Packagings' means any receptacle and any closure or fastening and any components, materials or wrappings which have the purpose of enabling the packagings to perform their containment function. It does not include any envelope, case or contrivance forming part of an article or any type of cradle, crate, freight container, aircraft container, container with integral pallet, aircraft pallet or vehicle: reg 2(1).

3 Ibid reg 5(1)(a).

4 Ibid reg 5(1)(b). 'Package' means the packagings and their contents prepared for carriage: reg 1(2).

5 Ibid reg 5(1)(c).

6 Ibid reg 5(1)(d).

7 Ibid reg 5(1)(e).

8 Ibid reg 6.

9 Ibid reg 7. This must include compliance with all recommendations or requirements relevant to the use of that method for explosives of that UN number: reg 7. 'UN Number' means one of the four digit numbers devised by the United Nations and allocated by the Health and Safety Executive or the Secretary of State to an explosive article or explosive substance as a means of identification: reg 2(1). 'UN Recommendations' means the United Nations Recommendations on the Transport of Dangerous Goods considered by the Economic and Social Council Resolution 645G (XXIII) of 26 April 1957: Packaging of Explosives for Carriage Regulations 1991, SI 1991/2097, reg 2(1) (definition substituted by SI 1999/303). As to the Secretary of State see PARA 913 ante.

Any person who consigns or carries certain specified explosives for the purpose of testing, chemical analysis, forensic examination or explosives detection in a load the net mass of which is no more than is necessary (and in no event more than 50 kg) is exempt from the Packaging of Explosives for Carriage Regulations 1991, SI 1991/2097, regs 7-9 by certificate of exemption No 1 of 1994.

10 'Approved testing laboratory' means a testing laboratory approved by the Secretary of State, or outside Great Britain, approved by the competent authority: Packaging of Explosives for Carriage Regulations 1991, SI 1991/2097, reg 2(1).

11 Ibid reg 8. 'Competent authority' means a person or organisation in any country which is for the time being a competent authority for the purposes of the testing and certification of packagings and the allocation of a UN mark under the United Nations Recommendations (see note 9 supra): reg 1(2). As to exemption from reg 8 see note 9 supra. 'UN mark' means a mark, allocated by the competent authority, specified in the United Nations Recommendations (see note 9 supra) to indicate that the packages which bear it correspond with a design type which has been successfully tested in accordance with and comply with the provision relating to manufacture required by the United Nations Recommendations: reg 2(1).

12 Ibid reg 9. As to exemption from reg 9 see note 9 supra. No person may mark any packagings with a UN mark (see note 11 supra) or any mark likely to be mistaken for a UN mark otherwise than by marking packages with the UN mark allocated by the competent authority (see note 10 supra) for that design type of packagings

and no person must mark any packaging with a UN mark other than with the authority of the certificate holder: reg 10(1), (2). No person may mark any packagings with a mark required by reg 11(2) (see note 15 infra) or with any mark likely to be mistaken for such a mark other than by marking the packagings with the correct particulars required by reg 11: reg 10(3). For labelling of explosives for conveyance see also the Classification and Labelling of Explosives Regulations 1983, SI 1983/1140 (as amended); and PARA 904 ante.

13 Packaging of Explosives Regulations 1991, SI 1991/2097, reg 11(1). Such packages must be marked with particulars specified in Sch 2: reg 11(1). This regulation does not apply to any package of explosives which was prepared before 1 September 1992 and which is accompanied by a certificate to that effect: reg 11(2).

14 Ibid reg 13(1).

15 Ibid reg 13(2) (amended by SI 1999/303).

16 Is imposed by the Packaging of Explosives Regulations 1991, SI 1991/2097 (as amended). For the meaning of 'military explosive' see PARA 904 note 5 ante.

17 Ibid reg 13(3).

UPDATE

989 Packing and marking

TEXT AND NOTES--Revoked: SI 2004/568.

Halsbury's Laws of England/EXPLOSIVES (VOLUME 17(2) (REISSUE))/3. SALE, IMPORTATION, EXPORTATION AND CONVEYANCE/(4) CONVEYANCE/(ii) Byelaws and Regulations/A. IN GENERAL/990. Byelaws made by statutory harbour authorities.

(ii) Byelaws and Regulations

A. IN GENERAL

990. Byelaws made by statutory harbour authorities.

A power is conferred on statutory harbour authorities to make byelaws prohibiting the entry or regulating the entry, carriage, handling and storage of dangerous substances¹. Such byelaws must not conflict with the Dangerous Substances in Harbour Areas Regulations 1987² or with any other relevant statutory provision³.

1 See the Dangerous Substances in Harbour Areas Regulations 1987, SI 1987/37, reg 43; and PORTS AND HARBOURS vol 36(1) (2007 Reissue) PARA 709. 'Statutory harbour authority' means a harbour authority within the meaning of the Harbours Act 1964 s 57 (see PORTS AND HARBOURS vol 36(1) (2007 Reissue) PARA 619), but a person is not a statutory harbour authority in respect of a harbour area which is inside the harbour area of another statutory harbour authority and which is used wholly or mainly for vessels bringing or receiving cargoes in connection with the manufacture of goods or electricity by that person or a related company: see the Dangerous Substances in Harbour Areas Regulations 1987, SI 1987/37, reg 2(1).

2 Ie the Dangerous Substances in Harbour Areas Regulations 1987, SI 1987/37 (as amended): see PORTS AND HARBOURS vol 36(1) (2007 Reissue) PARA 700 et seq.

3 Ibid reg 43(2).

Halsbury's Laws of England/EXPLOSIVES (VOLUME 17(2) (REISSUE))/3. SALE, IMPORTATION, EXPORTATION AND CONVEYANCE/(4) CONVEYANCE/(ii) Byelaws and Regulations/A. IN GENERAL/991. Gunpowder in harbours.

991. Gunpowder in harbours.

In dockyard ports Orders in Council may prohibit or restrict gunpowder being aboard a vessel in any specified part of the port and regulate its loading and unloading¹.

¹ Dockyard Ports Regulation Act 1865 s 5. See PORTS AND HARBOURS vol 36(1) (2007 Reissue) PARA 689. The penalty for an offence is a fine not exceeding level 3 on the standard scale: s 6 (amended by virtue of the Criminal Justice Act 1982 ss 40, 46; and by the Statute Law (Repeals) Act 1993). As to the standard scale see PARA 951 note 9 ante.

Halsbury's Laws of England/EXPLOSIVES (VOLUME 17(2) (REISSUE))/3. SALE, IMPORTATION, EXPORTATION AND CONVEYANCE/(4) CONVEYANCE/(ii) Byelaws and Regulations/A. IN GENERAL/992. Byelaws for canals.

992. Byelaws for canals.

All canal undertakers¹ over whose undertaking any explosive² is carried, or intended to be carried, are required, with the sanction of the Secretary of State³, to make byelaws for regulating the conveyance, loading, and unloading of such explosives⁴, and in particular for declaring and regulating all or any of the following matters:

- 68 (1) the notice to be given of the intention to send explosives for conveyance as merchandise on the canal⁵;
- 69 (2) subject to the general rules for packing⁶, the mode of stowing and keeping explosives for conveyance, and of giving notice by brands, labels or otherwise of the nature of the package containing them⁷;
- 70 (3) the description and construction of ships or boats⁸ to be used in the conveyance of explosives⁹;
- 71 (4) the prohibition or subjection to conditions and restrictions of the conveyance of explosives with other explosives, or with any articles or substances, or in ships or boats¹⁰;
- 72 (5) the fixing of places and times at which explosives are to be loaded or unloaded, and of the quantity to be loaded, unloaded or conveyed at one time or in one ship or boat¹¹;
- 73 (6) the precautions to be observed in conveying explosives, and in loading or unloading the ships or boats used in such conveyance, and the time during which explosive may be kept during such conveyance, loading and unloading¹²;
- 74 (7) the publication and supply of copies of the byelaws¹³;
- 75 (8) the enforcement of the Explosives Act 1875¹⁴; and
- 76 (9) generally the protection of persons and property from danger, whether or not by means similar to the foregoing¹⁵.

When confirmed, the byelaws apply to the canal, agents and servants of the undertaker making them, and to the persons using the canal, or the premises connected therewith and occupied by or under the control of the undertaker¹⁶.

The penalties to be annexed to any breach or attempt to commit any breach of any such byelaws may be all or any of the specified penalties¹⁷, and may be imposed on such persons and graduated in such manner as may be deemed just, according to the gravity of the offence, and according as it may be a first, second or other subsequent offence¹⁸.

Any byelaw may be amended or rescinded by a byelaw made in the same manner and with the same sanction as the original¹⁹.

1 Canal undertakings are now vested in the British Waterways Board: see the Transport Act 1962 s 1(1) (as amended), s 31; and RAILWAYS, INLAND WATERWAYS AND CROSS-COUNTRY PIPELINES vol 39(1A) (Reissue) PARA 44; WATER AND WATERWAYS vol 101 (2009) PARA 713 et seq. For the meaning of 'canal' see PARA 917 note 4 ante.

2 For the meaning of 'explosive' see PARA 905 ante.

3 As to the Secretary of State see PARA 913 ante.

4 Explosives Act 1875 s 35. See also s 39. Canal undertakers have the same power as harbour authorities to provide carriages, ships and boats for the conveyance, loading or unloading of explosives: see PARA 990 note 1 ante.

5 Ibid s 35. See also s 39.

6 As to these general rules see PARA 989 ante.

7 Explosives Act 1875 s 35. See also s 39.

8 For the meaning of 'ship' and 'boat' see PARA 909 note 8 ante.

9 Explosives Act 1875 s 35. See also s 39.

10 Ibid s 35. See also s 39.

11 Ibid s 35. See also s 39.

12 Ibid s 35. See also s 39.

13 Ibid s 35. See also s 39.

14 Ibid s 35. See also s 39.

15 Ibid s 35. See also s 39.

16 Ibid s 35. See also s 39.

17 The pecuniary penalties not exceeding level 3 on the standard scale or not exceeding a lesser amount for each offence, and ten pounds for each day during which the offence continues, and forfeiture of all or any part of the explosives in respect of which, or being in the ship or boat in respect of which, the breach of byelaw has taken place: ibid s 35 (amended by virtue of the Criminal Justice Act 1982 ss 40, 46). See also the Explosives Act 1875 s 39. As to the standard scale see PARA 951 note 9 ante.

18 Ibid s 35. See also s 39.

19 Ibid s 38.

UPDATE

992-993 Byelaws for canals, Byelaws for other wharves and docks

Repealed: SI 2005/1082.

Halsbury's Laws of England/EXPLOSIVES (VOLUME 17(2) (REISSUE))/3. SALE, IMPORTATION, EXPORTATION AND CONVEYANCE/(4) CONVEYANCE/(ii) Byelaws and Regulations/A. IN GENERAL/993. Byelaws for other wharves and docks.

993. Byelaws for other wharves and docks.

The occupier¹ of every wharf² or dock on or in which explosives³ are loaded or unloaded (if the operation is not otherwise subject to byelaws under the Explosives Act 1875) may, and if so required by the Secretary of State⁴ must, from time to time make, with the sanction of the Secretary of State, byelaws for regulating the loading and unloading of explosives on or in that wharf or dock⁵. The penalties to be annexed to any breach or attempt to commit any breach of any such byelaws may be all or any of the specified penalties⁶, and may be imposed on such persons and graduated in such manner as may be deemed just, according to the gravity of the offence, and according as it may be a first, second or other subsequent offence⁷. Any byelaws made⁸ may, if required by the Secretary of State, be rescinded, altered or added to by byelaws similarly made⁹. If an occupier fails to make byelaws within three months of the receipt of a requisition from the Secretary of State, the latter may make the byelaws, which are to have the same effect as if made by the occupier and duly sanctioned, and the same provision covers the rescission and amendment of existing byelaws¹⁰. In the case of a public wharf, or a wharf which has no occupier or whose occupier is unknown, the Secretary of State may make byelaws as if the occupier had failed to comply with his requisition, but where such a wharf abuts on a harbour, canal or railway, the harbour authority or canal or railway undertaking¹¹ has the same power, and, if required by the Secretary of State, is under the same obligation, to make byelaws as though it were the occupier¹².

1 For the meaning of 'occupier' see PARA 926 note 1 ante.

2 For the meaning of 'wharf' see PARA 909 note 3 ante.

3 For the meaning of 'explosive' see PARA 5 ante.

4 As to the Secretary of State see PARA 913 ante.

5 Explosives Act 1875 s 36 (repealed, in so far as it applies within harbours and harbour areas, by the Dangerous Substances in Harbour Areas Regulations 1987, SI 1987/37, reg 47(1)(a)). See also the Explosives Act 1875 s 39.

6 I.e. pecuniary penalties not exceeding level 3 on the standard scale or not exceeding a lesser amount for each offence, and ten pounds for each day during which the offence continues, and forfeiture of all or any part of the explosives in respect of which, or found on the wharf or in the dock or part of the wharf or dock in respect of which, the breach of the byelaw has taken place: *ibid* s 36 (amended by virtue of the Criminal Justice Act 1982 ss 40, 46). See also the Explosives Act 1875 s 39. As to the standard scale see PARA 951 note 9 ante.

7 *Ibid* s 36. As to the partial repeal of s 36 see note 5 *supra*.

8 I.e. byelaws made under *ibid* s 36.

9 Explosives Act 1875 s 36. As to the partial repeal of s 36 see note 5 *supra*. See also s 39.

10 *Ibid* s 36. As to the partial repeal of s 36 see note 5 *supra*. See also s 39.

11 See PARA 992 note 1 ante.

12 Explosives Act 1875 s 36. As to the partial repeal of s 36 see note 5 *supra*.

UPDATE

992-993 Byelaws for canals, Byelaws for other wharves and docks

Repealed: SI 2005/1082.

Halsbury's Laws of England/EXPLOSIVES (VOLUME 17(2) (REISSUE))/3. SALE, IMPORTATION, EXPORTATION AND CONVEYANCE/(4) CONVEYANCE/(ii) Byelaws and Regulations/B. CARRIAGE BY RAIL/994. Carriage of dangerous goods by rail.

B. CARRIAGE BY RAIL

994. Carriage of dangerous goods by rail.

Regulations have been made to provide for the carriage of dangerous goods by rail¹. This includes the carriage of explosives².

Subject to certain exceptions³, these regulations apply to the carriage of any dangerous goods in a container, package, tank container, tank wagon or wagon⁴.

The Health and Safety Commission⁵ approves and publishes certain 'approved documents', and (1) the operator of any container, tank container, tank wagon or wagon, (2) the operator of any train carrying any of the things mentioned in head (1), or (3) any person who designs, manufactures, imports, supplies, modifies, repairs, examines, tests, certifies or fills a tank, must take all reasonable steps to ensure that such of the requirements specified in any of the approved documents as are relevant are complied with⁶.

Provision is made for the carriage of dangerous goods in bulk in wagons and large containers, in small containers, in tanks, for the suitability of containers, packages, tank containers, tank wagons and wagons, and for the examination, testing and certification of tanks⁷. Provision is also made for the classification, packaging and labelling of dangerous goods to which certain regulations⁸ apply⁹.

Carriage information must be provided by consignors to the operators of tanks or wagons¹⁰, and train operators and infrastructure controllers must be provided with carriage information¹¹. The operator of any container, tank container, tank wagon or wagon must keep a record of the information contained within the carriage information for a period of at least three months after the completion of the relevant journey¹².

Information relating to the dangerous goods must be displayed on containers, tank containers, tank wagons and wagons¹³. Train crews and other persons connected with the carriage of dangerous goods must be provided with information, instruction and training¹⁴.

There is a prohibition against overfilling tank containers and tank wagons¹⁵. Mixed loading is also prohibited unless there is adequate segregation of consignments of dangerous goods¹⁶. In addition, the carriage of temperature controlled substances and uninhibited sulphur trioxide is prohibited¹⁷.

Provision is made for the loading, stowage, unloading and cleaning of containers, tank containers, tank wagons and wagons which are being used for the carriage of dangerous goods¹⁸. It is also required that all openings, valves and caps of tank containers and tank wagons are securely closed¹⁹. In addition, there are provisions as to the marshalling and formation of trains carrying dangerous goods; for the safe carriage and storage of such goods; for the prevention of fire, explosion and leakage; and for emergency arrangements²⁰.

After having regard to the circumstances of the case, the Health and Safety Executive may issue exemption certificates²¹. The Secretary of State may also issue such a certificate, in the interests of national security²².

In addition, there are provisions which relate solely to the carriage of explosives²³.

In any proceedings for an offence consisting of a contravention of any of the provisions of the Carriage of Dangerous Goods by Rail Regulations 1996 it is a defence²⁴ for the person charged

to prove that the commission of the offence was due to the act or default of another person, not being one of his employees and that he took all reasonable precautions and exercised all due diligence to avoid commission of the offence²⁵. Provision is also made for a transitional defence for offences committed prior to 1 January 1997²⁶.

1 See the Carriage of Dangerous Goods by Rail Regulations 1996, SI 1996/2089 (as amended). 'Dangerous goods' has the meaning assigned to it in the Carriage of Dangerous Goods (Classification, Packing and Labelling) and Use of Transportable Pressure Receptacles Regulations 1996, SI 1996/2092, reg 2(1): see the Carriage of Dangerous Goods by Rail Regulations 1996, SI 1996/2089, reg 1(2).

2 For the meaning of 'explosives' see PARA 995 note 1 post.

3 See the Carriage of Dangerous Goods by Rail Regulations 1996, SI 1996/2089, reg 2(2), (3), (4).

4 See *ibid* reg 2 (amended by SI 1998/2885; SI 1999/303). 'Container', 'tank container' and 'tank wagon' have the meanings assigned to them in the Carriage of Dangerous Goods (Classification, Packing and Labelling) and Use of Transportable Pressure Receptacles Regulations 1996, SI 1996/2092, reg 2(1): see the Carriage of Dangerous Goods by Rail Regulations 1996, SI 1996/2089, reg 1(2). 'Wagon' means a railway vehicle, other than a tank wagon, used for the carriage of goods: reg 1(2).

5 As to the Health and Safety Commission see HEALTH AND SAFETY AT WORK vol 52 (2009) PARA 376.

6 See the Carriage of Dangerous Goods by Rail Regulations 1996, SI 1996/2089, regs 3, 4 (reg 3 amended by SI 1999/303).

7 See the Carriage of Dangerous Goods by Rail Regulations 1996, SI 1996/2089, regs 5-9 (regs 5, 7-9 amended by SI 1999/303; reg 9 amended by SI 1998/2885).

8 See the Classification and Labelling of Explosives Regulations 1983, SI 1983/1140; the Packaging of Explosives for Carriage Regulations 1991, SI 1991/2097 (as amended); and the Carriage of Dangerous Goods (Classification, Packaging and Labelling) and Use of Transportable Pressure Receptacles Regulations 1996, SI 1996/2092 (as amended).

9 See the Carriage of Dangerous Goods by Rail Regulations 1996, SI 1996/2089, reg 10.

10 See *ibid* reg 11 (amended by SI 1999/303).

11 See the Carriage of Dangerous Goods by Rail Regulations 1996, SI 1996/2089, reg 12 (amended by SI 1999/303).

12 See the Carriage of Dangerous Goods by Rail Regulations 1996, SI 1996/2089, reg 13.

13 See *ibid* reg 14.

14 See *ibid* reg 15.

15 See *ibid* reg 16.

16 See *ibid* reg 17.

17 See *ibid* regs 29, 29A (reg 29A added by SI 1999/303).

18 See the Carriage of Dangerous Goods by Rail Regulations 1996, SI 1996/2089, reg 18 (amended by SI 1999/303).

19 See the Carriage of Dangerous Goods by Rail Regulations 1996, SI 1996/2089, reg 19.

20 See *ibid* regs 20-23.

21 See *ibid* reg 30(1), (2) (amended by SI 1999/303).

22 See the Carriage of Dangerous Goods by Rail Regulations 1996, SI 1996/2089, reg 30(3).

23 See *ibid* Pt VII (regs 24-28) (as amended); and PARAS 995-998 post.

24 The person charged will not be able to rely upon the defence referred to in *ibid* reg 31(1) without leave of the court unless, within a period ending seven clear days before the hearing to determine the mode of trial he has served on the prosecutor a notice in writing giving such information, as was then in his possession, identifying or assisting in the identification of the other person to whom he attributes blame for the contravention: reg 31(2). As to the mode of trial hearing see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(3) (2006 Reissue) PARA 1109 et seq. Where a contravention of any of the provisions of the Carriage of Dangerous Goods by Rail Regulations 1996, SI 1996/2089, by any person is due to the act or default of some other person, that other person is guilty of the offence which would, but for any defence under reg 31 available to the first-mentioned person, be constituted by the act or default: reg 31(3) (substituted by SI 1999/303).

25 Carriage of Dangerous Goods by Rail Regulations 1996, SI 1996/2089, reg 31(1).

26 See *ibid* reg 33.

UPDATE

994-1012 Carriage of dangerous goods by rail ... Defence

SI 1996/2092, SI 1996/2093, SI 1996/2089 (except regs 3 and 4) and SI 2007/1573 now replaced by Carriage of Dangerous Goods and Use of Transportable Pressure Equipment Regulations 2009, SI 2009/1348, which make provision implementing (1) Euratom Council Directive 89/618, Title II, art 5; (2) European Parliament and EC Council Directive 2008/68 (OJ L260, 30.9.2008, p 13), which applies the Annexes of the European Agreement Concerning the International Carriage of Dangerous Goods by Road; (3) Euratom Council Directive 96/29, Title IX, Section 1 (in relation to carriage by road or rail); and (4) EC Council Directive 1999/36 (amended by EC Commission Directive 2002/50).

994 Carriage of dangerous goods by rail

NOTE 4--SI 1996/2089 reg 2 further amended: SI 2003/1431.

NOTE 5--the Health and Safety Commission was abolished as from 1 April 2008: see the Legislative Reform (Health and Safety Executive) Order 2008, SI 2008/960, art 2.

NOTE 6--SI 1996/2089 reg 3 further amended: SI 2008/960.

NOTE 7--SI 1996/2089 reg 9 further amended: SI 2003/1431.

Halsbury's Laws of England/EXPLOSIVES (VOLUME 17(2) (REISSUE))/3. SALE, IMPORTATION, EXPORTATION AND CONVEYANCE/(4) CONVEYANCE/(ii) Byelaws and Regulations/B. CARRIAGE BY RAIL/995. Restrictions on the carriage of explosives by rail.

995. Restrictions on the carriage of explosives by rail.

Restrictions are placed on the carriage of explosives by rail¹. No person may cause or permit to be carried:

- 77 (1) any unclassified explosives²;
- 78 (2) any explosives except in accordance with the Carriage of Dangerous Goods by Rail Regulations 1996³;
- 79 (3) any explosives in a tank container or a tank wagon⁴;
- 80 (4) any explosives in Compatibility Group K⁵;
- 81 (5) any explosive substances⁶ in an open container or wagon unless:
 - 1 (a) they form part of equipment or material belonging to Her Majesty's Forces or under the direction of a member of Her Majesty's Forces or a person authorised by the Secretary of State⁷;
 - 2 (b) they are carried under the direction of a member of Her Majesty's Forces or a person authorised by the Secretary of State⁸; and
 - 3 (c) the means of initiation not having at least two effective protective devices are removed or the explosive substances are in a locked military vehicle⁹;
- 82 (6) any explosive substances in Compatibility Group A¹⁰;
- 83 (7) any explosives in Compatibility Group L, other than in a load which is under sole use¹¹;
- 84 (8) explosives with a net explosive content exceeding 20 tonnes in any container or wagon, unless they are in Division 1.4¹²;
- 85 (9) explosives in any adjacent group of containers or wagons, if the explosives are of a specified type¹³;
- 86 (10) any explosives within different Compatibility Groups (other than those in Division 1.4), in the same container or wagon unless effective measures have been taken to ensure that the carriage of such a mixed load is no more dangerous than the carriage of the same quantity of explosives within any one of the Compatibility Groups in the load would be¹⁴;
- 87 (11) any explosive articles¹⁵ in an open container or open wagon unless:
 - 3 (a) by reason of their packaged weight or dimension, it is not possible to carry the articles concerned in a closed container or closed wagon¹⁶; or
 - 4 (b) the explosive articles form part of equipment or material belonging to Her Majesty's Forces or under the direction of a member of Her Majesty's Forces or a person authorised by the Secretary of State; the explosive articles are carried under the direction of Her Majesty's Forces or a person authorised by the Secretary of State; and means of initiation not having at least two effective protective devices are removed or the explosive articles are in a locked military vehicle¹⁷.

¹ See the Carriage of Dangerous Goods by Rail Regulations 1996, SI 1996/2089, reg 24 (amended by SI 1999/303). In those regulations, 'explosives' means explosive articles or explosive substances which have been assigned on classification to Class 1 in accordance with the Classification and Labelling of Explosives Regulations 1983, SI 1983/1140 (as amended) (see PARA 904 ante); or are unclassified: Carriage of Dangerous

Goods by Rail Regulations 1996, SI 1996/2089, reg 1(2). For the meaning of 'explosive substance' see note 6 infra. For the meaning of 'explosive article' see note 15 infra.

2 Ibid reg 24(1). 'Unclassified' in relation to any explosives means those explosives which have not been classified in accordance with the Classification and Labelling of Explosives Regulations 1983, SI 1983/1140 (as amended): Carriage of Dangerous Goods by Rail Regulations 1996, SI 1996/2089, reg 28(2)(b).

3 Ibid reg 24(2).

4 Ibid reg 24(3). As to the meaning of 'tank container', 'tank wagon', 'container' and 'wagon' see PARA 994 note 4 ante.

5 Ibid reg 24(4) (amended by SI 1999/303). Explosives in Compatibility Group K may be carried if they are to be carried for the purpose of explosives ordnance disposal under the direction of a member of Her Majesty's Forces or a person authorised by the Secretary of State; or if the approval has been obtained of the train operator and of the infrastructure controller: see the Carriage of Dangerous Goods by Rail Regulations 1996, SI 1996/2089, reg 24(4)(a), (b). As to the Secretary of State see PARA 913 ante. For the meaning of 'Compatibility Group' see reg 24(1).

6 'Explosive substance' means a solid or liquid substance, or a mixture of solid or liquid substances or both, which is capable by chemical reaction in itself of producing gas at such a temperature and pressure and at such a speed as could cause damage to surroundings or which is designed to produce an effect by heat, light, sound, gas or smoke or a combination of these as a result of non-detonative self-sustaining exothermic chemical reactions: ibid reg 2(1).

7 See ibid reg 24(5)(a) (reg 24(5) substituted by SI 1999/303).

8 See the Carriage of Dangerous Goods by Rail Regulations 1996, SI 1996/2089, reg 24(5)(b) (as substituted: see note 7 supra).

9 See ibid reg 24(5)(c) (as substituted: see note 7 supra). 'Means of initiation' means a device intended to cause the detonation of an explosive: reg 24(13) (added by SI 1999/303). 'Military vehicle' means a vehicle which is owned by Her Majesty's Forces, and includes a vehicle which has been provided under any kind of agreement or arrangement under which payments are, or are to be, made for the provision of the vehicle, including a conditional-sale agreement, a credit-sale agreement, a hire-purchase agreement and a contract for sale: Carriage of Dangerous Goods by Rail Regulations 1996, SI 1996/2089, reg 24(13) (as so added).

10 See ibid reg 24(6) (amended by SI 1999/303).

11 See the Carriage of Dangerous Goods by Rail Regulations 1996, SI 1996/2089, reg 24(6A) (added by SI 1999/303).

12 See the Carriage of Dangerous Goods by Rail Regulations 1996, SI 1996/2089, reg 24(7) (amended by SI 1999/303). For the meaning of 'Division' see the Classification and Labelling of Explosives Regulations 1983, SI 1983/1140, reg 2(1).

13 See the Carriage of Dangerous Goods by Rail Regulations 1996, SI 1996/2089, reg 24(8)(a). The type is specified in Sch 8, Column 1: see reg 24(8)(a). Where a train comprises more than one such group of adjacent containers or wagons, the train operator must ensure that the minimum separation distance between the nearest parts of each such group is that specified in the relevant entry in Sch 8, Column 3: reg 24(8)(b).

14 See ibid reg 24(9) (amended by SI 1999/303). Nothing in the Carriage of Dangerous Goods by Rail Regulations 1996, SI 1996/2089, reg 24(9) (as so amended) applies to the carriage of explosives within different Compatibility Groups mixed in accordance with Sch 9 (amended by SI 1999/303): Carriage of Dangerous Goods by Rail Regulations 1996, SI 1996/2089, reg 24(10).

15 'Explosive article' means an article containing one or more explosive substances: ibid reg 1(2).

16 Ibid reg 24(11)(a) (reg 24(11) substituted by SI 1999/303). Any person who causes or permits any explosive articles to be carried in an open container or open wagon in accordance with the Carriage of Dangerous Goods by Rail Regulations 1996, SI 1996/2089, reg 24(11) (as so substituted) must ensure that the articles concerned are completely covered by sheeting and that the sheeting is securely fixed to the open container or open wagon concerned except where it would not be reasonably practicable to cover the explosive articles with such sheeting and it would not be necessary for their protection: reg 24(12).

17 Ibid reg 24(11)(b)(i), (ii), (iii) (as substituted: see note 16 supra).

UPDATE

994-1012 Carriage of dangerous goods by rail ... Defence

SI 1996/2092, SI 1996/2093, SI 1996/2089 (except regs 3 and 4) and SI 2007/1573 now replaced by Carriage of Dangerous Goods and Use of Transportable Pressure Equipment Regulations 2009, SI 2009/1348, which make provision implementing (1) Euratom Council Directive 89/618, Title II, art 5; (2) European Parliament and EC Council Directive 2008/68 (OJ L260, 30.9.2008, p 13), which applies the Annexes of the European Agreement Concerning the International Carriage of Dangerous Goods by Road; (3) Euratom Council Directive 96/29, Title IX, Section 1 (in relation to carriage by road or rail); and (4) EC Council Directive 1999/36 (amended by EC Commission Directive 2002/50).

995 Restrictions on the carriage of explosives by rail

NOTE 12--Definition of 'Division' omitted: SI 1983/1140 reg 2(1) (amended by SI 2004/568).

Halsbury's Laws of England/EXPLOSIVES (VOLUME 17(2) (REISSUE))/3. SALE, IMPORTATION, EXPORTATION AND CONVEYANCE/(4) CONVEYANCE/(ii) Byelaws and Regulations/B. CARRIAGE BY RAIL/996. Carriage of explosives on passenger trains.

996. Carriage of explosives on passenger trains.

In general, no person may carry any explosive¹ on a passenger train². However, gunpowder or smokeless powder or any mixture thereof and explosives in Compatibility Group S³ may be carried in a passenger train provided certain conditions are complied with⁴.

1 For the meaning of 'explosive' see PARA 995 note 1 ante.

2 Carriage of Dangerous Goods by Rail Regulations 1996, SI 1996/2089, reg 25(1).

3 For the meaning of 'Compatibility Group' see *ibid* reg 24(1).

4 Carriage of Dangerous Goods by Rail Regulations 1996, SI 1996/2089, reg 25(2)(a), (b) (reg 25(2)(b) amended by SI 1999/303). The conditions referred to are that (1) the person concerned has obtained the approval of the train operator; (2) the explosives are kept with the person concerned and are kept properly packed; (3) the net explosive content of explosives carried by the person concerned does not exceed 2 kg; and (4) all reasonable precautions are taken by the person concerned to prevent accidents arising from the explosives being carried: Carriage of Dangerous Goods by Rail Regulations 1996, SI 1996/2089, reg 25(3)(a)-(d). Nothing in reg 25(3)(a), (b) applies to the carriage of railway fog signals: reg 25(4). 'Railway fog signal' means a signal, railway track, explosive in Division 1.4 and Compatibility Group S and with the UN Number 0193: reg 28(2)(a) (amended by SI 1999/303).

UPDATE

994-1012 Carriage of dangerous goods by rail ... Defence

SI 1996/2092, SI 1996/2093, SI 1996/2089 (except regs 3 and 4) and SI 2007/1573 now replaced by Carriage of Dangerous Goods and Use of Transportable Pressure Equipment Regulations 2009, SI 2009/1348, which make provision implementing (1) Euratom Council Directive 89/618, Title II, art 5; (2) European Parliament and EC Council Directive 2008/68 (OJ L260, 30.9.2008, p 13), which applies the Annexes of the European Agreement Concerning the International Carriage of Dangerous Goods by Road; (3) Euratom Council Directive 96/29, Title IX, Section 1 (in relation to carriage by road or rail); and (4) EC Council Directive 1999/36 (amended by EC Commission Directive 2002/50).

Halsbury's Laws of England/EXPLOSIVES (VOLUME 17(2) (REISSUE))/3. SALE, IMPORTATION, EXPORTATION AND CONVEYANCE/(4) CONVEYANCE/(ii) Byelaws and Regulations/B. CARRIAGE BY RAIL/997. Loading and stowage requirements for explosives for carriage in containers and wagons.

997. Loading and stowage requirements for explosives for carriage in containers and wagons.

Both the consignor¹ and the consignee of explosives², other than explosives contained in a sealed container or sealed wagon must each appoint a responsible person and ensure that that person is in constant attendance during the loading of those explosives³.

The operator of a container or wagon which is being used for the carriage of explosives must ensure (1) that prior to loading, the floor of the container or wagon concerned is properly cleaned⁴; and (2) that the explosives are stowed in the container or wagon so that they cannot move or shift in such a way as to create a significant risk or significantly increase any existing risk to the health or safety of any person during carriage⁵.

No person, other than any person directly concerned with the carriage of the explosives, may come within 25 metres of those explosives without reasonable cause whilst they are being loaded into or unloaded from any container or wagon⁶. No person may smoke or carry any source of ignition in the vicinity of explosives whilst they are being loaded into or unloaded from any container or wagon⁷.

1 'Consignor' has the meaning assigned to it in the Carriage of Dangerous Goods (Classification, Packing and Labelling) and Use of Transportable Pressure Receptacles Regulations 1996, SI 1996/2092, reg 2(1): see the Carriage of Dangerous Goods by Rail Regulations 1996, SI 1996/2089, reg 1(2).

2 For the meaning of 'explosive' see PARA 995 note 1 ante.

3 Carriage of Dangerous Goods by Rail Regulations 1996, SI 1996/2089, reg 26(1), (2). For the meaning of 'wagon' and 'container' see PARA 994 note 4 ante.

4 Ibid reg 26(3)(a).

5 Ibid reg 26(3)(b).

6 Ibid reg 26(4).

7 Ibid reg 26(5).

UPDATE

994-1012 Carriage of dangerous goods by rail ... Defence

SI 1996/2092, SI 1996/2093, SI 1996/2089 (except regs 3 and 4) and SI 2007/1573 now replaced by Carriage of Dangerous Goods and Use of Transportable Pressure Equipment Regulations 2009, SI 2009/1348, which make provision implementing (1) Euratom Council Directive 89/618, Title II, art 5; (2) European Parliament and EC Council Directive 2008/68 (OJ L260, 30.9.2008, p 13), which applies the Annexes of the European Agreement Concerning the International Carriage of Dangerous Goods by Road; (3) Euratom Council Directive 96/29, Title IX, Section 1 (in relation to carriage by road or rail); and (4) EC Council Directive 1999/36 (amended by EC Commission Directive 2002/50).

Halsbury's Laws of England/EXPLOSIVES (VOLUME 17(2) (REISSUE))/3. SALE, IMPORTATION, EXPORTATION AND CONVEYANCE/(4) CONVEYANCE/(ii) Byelaws and Regulations/B. CARRIAGE BY RAIL/998. Security measures for explosives.

998. Security measures for explosives.

Where explosives¹ are to be carried in a closed container or closed wagon the operator must ensure that the container or wagon concerned is sealed prior to carriage to prevent unauthorised access². The train operator and infrastructure controller have responsibility for ensuring that the security of any container or wagon which is being used for the carriage of explosives is maintained whenever the train is stationary³. The train operator must also ensure that the carriage of the explosives is completed within a reasonable length of time, having regard to the distance involved⁴.

The consignee of explosives which have been carried by train must ensure that the explosives are removed from the railway facility to which they have been carried as soon as is practicable after their arrival there⁵.

1 For the meaning of 'explosive' see PARA 995 note 1 ante.

2 Carriage of Dangerous Goods by Rail Regulations 1996, SI 1996/2089, reg 27(1). For the meaning of 'wagon' and 'container' see PARA 994 note 4 ante.

3 Ibid reg 27(2).

4 Ibid reg 27(3).

5 Ibid reg 27(4).

UPDATE

994-1012 Carriage of dangerous goods by rail ... Defence

SI 1996/2092, SI 1996/2093, SI 1996/2089 (except regs 3 and 4) and SI 2007/1573 now replaced by Carriage of Dangerous Goods and Use of Transportable Pressure Equipment Regulations 2009, SI 2009/1348, which make provision implementing (1) Euratom Council Directive 89/618, Title II, art 5; (2) European Parliament and EC Council Directive 2008/68 (OJ L260, 30.9.2008, p 13), which applies the Annexes of the European Agreement Concerning the International Carriage of Dangerous Goods by Road; (3) Euratom Council Directive 96/29, Title IX, Section 1 (in relation to carriage by road or rail); and (4) EC Council Directive 1999/36 (amended by EC Commission Directive 2002/50).

Halsbury's Laws of England/EXPLOSIVES (VOLUME 17(2) (REISSUE))/3. SALE, IMPORTATION, EXPORTATION AND CONVEYANCE/(4) CONVEYANCE/(ii) Byelaws and Regulations/C. CARRIAGE BY ROAD/999. Conveyance by road etc.

C. CARRIAGE BY ROAD

999. Conveyance by road etc.

Provision has been made for the carriage of explosives by road¹. The provisions do not apply in relation to the armed forces².

¹ See the Carriage of Explosives by Road Regulations 1996, SI 1996/2093 (as amended); para 1000 et seq post. These regulations are health and safety regulations, and liable to be enforced accordingly: see PARA 903 ante. For the meaning of 'explosives' in those regulations see PARA 1000 note 2 post

² See *ibid* reg 4.

UPDATE

994-1012 Carriage of dangerous goods by rail ... Defence

SI 1996/2092, SI 1996/2093, SI 1996/2089 (except regs 3 and 4) and SI 2007/1573 now replaced by Carriage of Dangerous Goods and Use of Transportable Pressure Equipment Regulations 2009, SI 2009/1348, which make provision implementing (1) Euratom Council Directive 89/618, Title II, art 5; (2) European Parliament and EC Council Directive 2008/68 (OJ L260, 30.9.2008, p 13), which applies the Annexes of the European Agreement Concerning the International Carriage of Dangerous Goods by Road; (3) Euratom Council Directive 96/29, Title IX, Section 1 (in relation to carriage by road or rail); and (4) EC Council Directive 1999/36 (amended by EC Commission Directive 2002/50).

Halsbury's Laws of England/EXPLOSIVES (VOLUME 17(2) (REISSUE))/3. SALE, IMPORTATION, EXPORTATION AND CONVEYANCE/(4) CONVEYANCE/(ii) Byelaws and Regulations/C. CARRIAGE BY ROAD/1000. Restrictions on carriage of explosives by road.

1000. Restrictions on carriage of explosives by road.

No person may carry in a vehicle¹:

- 88 (1) explosives² of Compatibility Group K³;
- 89 (2) unclassified explosives or explosives which have been allocated on classification the UN Number 0190 except⁴:
- 5
 - 6. (a) provided those explosives are not initiating explosives, as a commercial sample or as a sample for one or more of the following purposes, namely research and development, quality control, their testing or in connection with an application for their classification⁵;
 - 7. (b) in accordance with such conditions as are approved in writing for the time being by the Health and Safety Executive⁶ or, in the case of military explosives, by the Secretary of State⁷;
- 6
 - 90 (3) explosives in Compatibility Group L other than in a load which is under sole use⁸.

No person may cause or permit the carriage in bulk of explosives which are explosive substances⁹.

1 'Vehicle' means any conveyance used for the carriage of explosives by road: Carriage of Explosives by Road Regulations 1996, SI 1996/2093, reg 2(1).

2 For these purposes, 'explosives' means explosive articles or substances which have been assigned on classification to Class 1 in accordance with the Classification and Labelling of Explosives Regulations 1983, SI 1983/1140 (as amended) (see PARA 3A ante), or are unclassified: Carriage of Explosives by Road Regulations 1996, SI 1996/2093, reg 2(1). 'Explosive article' means an article containing one or more explosive substances: reg 2(1). 'Explosive substance' means a solid or liquid substance, or a mixture of solid or liquid substances or both, which is capable by chemical reaction in itself of producing gas at such a temperature and pressure and at such a speed as could cause damage to surroundings or which is designed to produce an effect by heat, light, sound, gas or smoke or a combination of these as a result of non-detonative self-sustaining exothermic chemical reactions: reg 2(1).

3 Ibid reg 7(1). For the meaning of 'Compatibility Group' see reg 2(1).

4 Ibid reg 7(2) (substituted by SI 1999/303). For the meaning of 'UN number' see Carriage of Explosives by Road Regulations 1996, SI 1996/2093, reg 2(1).

5 Ibid reg 7(2)(a) (reg 7(2), (3) substituted by SI 1999/303).

6 As to the Health and Safety Executive see HEALTH AND SAFETY AT WORK vol 52 (2009) PARAS 361-371.

7 Carriage of Explosives by Road Regulations 1996, SI 1996/2093, reg 7(2)(b) (as substituted: see note 5 supra). 'Military explosive' has the meaning assigned by the Classification and Labelling of Explosives Regulations 1983, SI 1983/1140, reg 2(1) (see PARA 904 note 5 ante): Carriage of Explosives by Road Regulations 1996, SI 1996/2093, reg 2(1).

8 Ibid reg 7(3) (as substituted: see note 5 supra).

9 Ibid reg 9.

UPDATE

994-1012 Carriage of dangerous goods by rail ... Defence

SI 1996/2092, SI 1996/2093, SI 1996/2089 (except regs 3 and 4) and SI 2007/1573 now replaced by Carriage of Dangerous Goods and Use of Transportable Pressure Equipment Regulations 2009, SI 2009/1348, which make provision implementing (1) Euratom Council Directive 89/618, Title II, art 5; (2) European Parliament and EC Council Directive 2008/68 (OJ L260, 30.9.2008, p 13), which applies the Annexes of the European Agreement Concerning the International Carriage of Dangerous Goods by Road; (3) Euratom Council Directive 96/29, Title IX, Section 1 (in relation to carriage by road or rail); and (4) EC Council Directive 1999/36 (amended by EC Commission Directive 2002/50).

Halsbury's Laws of England/EXPLOSIVES (VOLUME 17(2) (REISSUE))/3. SALE, IMPORTATION, EXPORTATION AND CONVEYANCE/(4) CONVEYANCE/(ii) Byelaws and Regulations/C. CARRIAGE BY ROAD/1001. Restrictions on carriage of explosives in passenger vehicles.

1001. Restrictions on carriage of explosives in passenger vehicles.

No person may carry explosives¹ in a vehicle² which is being used to carry passengers for hire or reward, except in accordance with specified conditions³.

1 For the meaning of 'explosives' see PARA 1000 note 2 ante.

2 For the meaning of 'vehicle' see PARA 1000 note 1 ante.

3 Carriage of Explosives by Road Regulations 1996, SI 1996/2093, reg 8(1). The specified conditions are that (1) the only explosives carried by the person are any of the explosives specified in Sch 1 Pts I, II, gunpowder or smokeless powder, or any mixture of them; (2) the maximum total quantity of explosives carried by that person does not exceed 2 kg; (3) the explosives are kept with that person and are kept properly packed; and (4) all reasonable precautions are taken by that person for the prevention of accidents arising from the explosives: reg 8(2)(a)-(d). For these purposes, where explosives are being carried by a passenger, the driver and operator of the vehicle are not to be treated as carrying them as well: reg 8(3).

UPDATE

994-1012 Carriage of dangerous goods by rail ... Defence

SI 1996/2092, SI 1996/2093, SI 1996/2089 (except regs 3 and 4) and SI 2007/1573 now replaced by Carriage of Dangerous Goods and Use of Transportable Pressure Equipment Regulations 2009, SI 2009/1348, which make provision implementing (1) Euratom Council Directive 89/618, Title II, art 5; (2) European Parliament and EC Council Directive 2008/68 (OJ L260, 30.9.2008, p 13), which applies the Annexes of the European Agreement Concerning the International Carriage of Dangerous Goods by Road; (3) Euratom Council Directive 96/29, Title IX, Section 1 (in relation to carriage by road or rail); and (4) EC Council Directive 1999/36 (amended by EC Commission Directive 2002/50).

Halsbury's Laws of England/EXPLOSIVES (VOLUME 17(2) (REISSUE))/3. SALE, IMPORTATION, EXPORTATION AND CONVEYANCE/(4) CONVEYANCE/(ii) Byelaws and Regulations/C. CARRIAGE BY ROAD/1002. Provisions relating to vehicles and containers.

1002. Provisions relating to vehicles and containers.

The operator¹ of a vehicle or container which is intended to be, or is being, used for the carriage of explosives² must ensure that such a vehicle or container is suitable for the safety and security of the explosives being carried³.

The Health and Safety Commission⁴ approves and publishes a document entitled 'Approved Requirements for the Construction of Vehicles Intended for the Carriage of Explosives by Road' which contains (1) the requirements for the construction of different types of vehicles⁵ for the carriage of explosives for the purposes of certain requirements⁶; and (2) explanatory notes and other material requisite for the use of the document⁷. The Health and Safety Commission may approve a revision of the approved document and, within three months of the date of that approval, publish in such manner as it considers appropriate, a notice specifying the revision, the date on which it was approved and the date on which it takes effect⁸. Where the Health and Safety Commission approves such a revision, during the period between the publication by the Commission of a notice specifying that revision and the date on which that revision takes effect, a person may comply with the statutory requirements⁹ as if any reference to the approved document were a reference to the approved document prior to that revision or to the approved document as revised¹⁰.

Limits on quantities of explosives and restrictions on the carriage of mixed loads are imposed on vehicle and container operators¹¹.

1 The operator of a vehicle or container is (1) the person who, having a place of business in Great Britain, has the management thereof for the time being; or (2) if no person satisfies the requirements of head (1), the driver of the vehicle or, in the case of a container, the driver of the vehicle on which the container is carried: Carriage of Explosives by Road Regulations 1996, SI 1996/2093, reg 6(1). Notwithstanding reg 6(1), a person is not to be regarded as being the operator of a vehicle or container solely because he has the management thereof during loading or unloading; or the vehicle or container is on premises which are under his control: reg 6(2). For the meaning of 'vehicle' see PARA 1000 note 1 ante. 'Container' has the meaning assigned to it by the Carriage of Dangerous Goods (Classification, Packaging and Labelling) and Use of Transportable Pressure Receptacles Regulations 1996, SI 1996/2092, reg 2(1): Carriage of Explosives by Road Regulations 1996, SI 1996/2093, reg 2(1).

2 For the meaning of 'explosive' see PARA 1000 note 2 ante.

3 Carriage of Explosives by Road Regulations 1996, SI 1996/2093, reg 10(1). Without prejudice to the generality of reg 10(1), the operator of a vehicle which was constructed on or after 1 January 1997 or a container, whether constructed before or after that date, which is intended to be, or is being, used for the carriage of explosives, must ensure that the requirements of Sch 2 are complied with: reg 10(2).

4 As to the Health and Safety Commission (now abolished) see HEALTH AND SAFETY AT WORK Vol 52 (2009) PARA 376.

5 As to types of vehicles see the Carriage of Explosives by Road Regulations 1996, SI 1996/2093, reg 12.

6 Ibid reg 11(1)(a). The requirements to which this provision refers are those of regs 10, 12, 13, Schs 2, 3 (as amended): reg 11(1)(a).

7 Ibid reg 11(1)(b).

8 Carriage of Explosives by Road Regulations 1996, SI 1996/2093, reg 11(2). The date on which the revision takes effect must not be less than six months after the date of the approval of the revision: reg 11(2).

9 Ie the requirements of the Carriage of Explosives by Road Regulations 1996, SI 1996/2093 (as amended).

10 Ibid reg 11(2A) (added by SI 1999/303).

11 See the Carriage of Explosives by Road Regulations 1996, SI 1996/2093, regs 13, 14, Schs 3, 4 (reg 14, Schs 3, 4 amended by SI 1999/303; Sch 54 also amended by SI 1999/257).

UPDATE

994-1012 Carriage of dangerous goods by rail ... Defence

SI 1996/2092, SI 1996/2093, SI 1996/2089 (except regs 3 and 4) and SI 2007/1573 now replaced by Carriage of Dangerous Goods and Use of Transportable Pressure Equipment Regulations 2009, SI 2009/1348, which make provision implementing (1) Euratom Council Directive 89/618, Title II, art 5; (2) European Parliament and EC Council Directive 2008/68 (OJ L260, 30.9.2008, p 13), which applies the Annexes of the European Agreement Concerning the International Carriage of Dangerous Goods by Road; (3) Euratom Council Directive 96/29, Title IX, Section 1 (in relation to carriage by road or rail); and (4) EC Council Directive 1999/36 (amended by EC Commission Directive 2002/50).

Halsbury's Laws of England/EXPLOSIVES (VOLUME 17(2) (REISSUE))/3. SALE, IMPORTATION, EXPORTATION AND CONVEYANCE/(4) CONVEYANCE/(ii) Byelaws and Regulations/C. CARRIAGE BY ROAD/1003. Information.

1003. Information.

Certain information and signs are required to be, or prohibited from being, displayed on vehicles and containers¹. The responsibility for the display of such information belongs to the operator of the vehicle or container² and to the driver and any attendant of the vehicle³. Information must also be provided by consignors⁴. No consignor or anyone acting on his behalf may provide false or misleading information to any operator engaged by him, concerning the explosives⁵ to be carried⁶.

Documentation must be provided by operators⁷. No operator or anyone acting on his behalf may provide false or misleading information to any other operator engaged by him or to any driver concerning the explosives to be carried⁸. The operator must keep a record of the information contained in the transport documentation⁹, other than the emergency information, for at least three months after the completion of the relevant journey¹⁰.

Documentation must also be available during carriage¹¹. The driver and any attendant of a vehicle which is being used for the carriage of explosives must ensure that the transport documentation is kept readily available on the vehicle at all times while the explosives are being carried¹² and is produced on request to any police constable or goods vehicle examiner¹³.

Where a trailer which is being used for the carriage of explosives becomes detached from the motor vehicle¹⁴,

- 91 (1) the driver of the vehicle must give the transport documentation (or an authenticated copy of it) to the occupier of any premises on which the trailer is parked and, in such a case, the occupier must ensure that such documentation is kept readily available at those premises¹⁵; or
- 92 (2) the driver must attach the transport documentation (or an authenticated copy of it) to the trailer in a readily visible position¹⁶.

The driver of a vehicle which has been used for the carriage of explosives must ensure that any documentation relating solely to explosives which are not then being carried is either removed from the vehicle or placed in a securely closed container clearly marked to show that it does not relate to any explosives which are being carried¹⁷.

1 See the Carriage of Explosives by Road Regulations 1996, SI 1996/2093, reg 15, Schs 4, 5 (reg 15 amended by SI 1999/303). For the meaning of 'vehicle' see PARA 1000 note 1 ante. For the meaning of 'container' see PARA 1002 note 1 ante.

2 See Carriage of Explosives by Road Regulations 1996, SI 1996/2093, reg 15(1). For the meaning of 'operator' see PARA 1002 note 1 ante.

3 See *ibid* reg 15(2).

4 See *ibid* reg 16. Any consignor of explosives must ensure that prior to carriage any operator engaged by him to carry those explosives is provided with the information, in written form, specified in Sch 6 Pt I: reg 16(1). Subject to reg 17(2) (see note 7 *infra*), reg 16(1) does not apply in circumstances where the consignor is also the operator, provided he is carrying the explosives on his own behalf: reg 16(2). 'Consignor' means (1) the person who, having a place of business in Great Britain, consigns, whether as principal or agent for another, explosives for carriage; or (2) if no person satisfies the requirements of head (1), the consignee of those goods in so far as that person has control over the carriage of those explosives in Great Britain: reg 2(1).

- 5 For the meaning of 'explosive' see PARA 1002 note 2 ante.
- 6 Carriage of Explosives by Road Regulations 1996, SI 1996/2093, reg 16(3).
- 7 See *ibid* reg 17. Any operator who engages another operator to carry explosives must ensure that prior to carriage that operator is provided with the information referred to in reg 16(1) (see note 4 *supra*): reg 17(1). Notwithstanding reg 16(2) (see note 4 *supra*), prior to the commencement of the journey, the operator of a vehicle which is to be used for the carriage of explosives must ensure that the driver of that vehicle or any attendant is in possession of the information, in written form, specified in Sch 6 Pt II: reg 17(2). Emergency information (referred to in Sch 6 Pt III para 1(d) and specified in PARAS 2, 3) must be in the form set out in Sch 6 Pt III: reg 17(2A) (added by SI 1999/303).
- 8 Carriage of Explosives by Road Regulations 1996, SI 1996/2093, reg 17(3).
- 9 'Transport documentation' means the documentation specified in *ibid* Sch 6 Pt II: reg 2(1).
- 10 *Ibid* reg 17(4). As to the emergency information see also note 7 *supra*.
- 11 See *ibid* reg 18.
- 12 *Ibid* reg 18(1)(a). Nothing in reg 18(1)(a) prevents the removal from the vehicle of the transport documentation for the purpose of showing it, or otherwise communicating it, to a police constable, the fire brigade, a goods vehicle examiner or an inspector: reg 18(4).
- 13 *Ibid* reg 18(1)(b).
- 14 *Ibid* reg 18(2).
- 15 *Ibid* reg 18(2)(a).
- 16 *Ibid* reg 18(2)(b).
- 17 *Ibid* reg 18(3).

UPDATE

994-1012 Carriage of dangerous goods by rail ... Defence

SI 1996/2092, SI 1996/2093, SI 1996/2089 (except regs 3 and 4) and SI 2007/1573 now replaced by Carriage of Dangerous Goods and Use of Transportable Pressure Equipment Regulations 2009, SI 2009/1348, which make provision implementing (1) Euratom Council Directive 89/618, Title II, art 5; (2) European Parliament and EC Council Directive 2008/68 (OJ L260, 30.9.2008, p 13), which applies the Annexes of the European Agreement Concerning the International Carriage of Dangerous Goods by Road; (3) Euratom Council Directive 96/29, Title IX, Section 1 (in relation to carriage by road or rail); and (4) EC Council Directive 1999/36 (amended by EC Commission Directive 2002/50).

Halsbury's Laws of England/EXPLOSIVES (VOLUME 17(2) (REISSUE))/3. SALE, IMPORTATION, EXPORTATION AND CONVEYANCE/(4) CONVEYANCE/(ii) Byelaws and Regulations/C. CARRIAGE BY ROAD/1004. Loading, stowage, unloading and cleaning of vehicles and containers.

1004. Loading, stowage, unloading and cleaning of vehicles and containers.

The operator¹ and any other person engaged in the carriage of explosives² must take such steps as it is reasonable for them respectively to take to ensure that nothing in the manner in which explosives are loaded, stowed or unloaded from a vehicle³ or container⁴ is liable to create a significant risk or significantly increase any existing risk to the health or safety of any person, arising out of the presence of those explosives⁵.

The driver and the operator of a vehicle which is being used for the carriage of explosives which require labelling⁶ or which is empty, uncleaned, having been used for the carriage of such explosives, must ensure that no food is carried in that vehicle unless it is effectively separated from any such explosives or is otherwise adequately protected from the risk of contamination by those explosives⁷.

No driver or member of the crew of a vehicle which is being used for the carriage of explosives may open a package containing any explosives unless authorised to do so by the operator of that vehicle⁸.

1 For the meaning of 'operator' see PARA 1002 note 1 ante.

2 For the meaning of 'explosive' see PARA 1000 note 2 ante.

3 For the meaning of 'vehicle' see PARA 1002 note 1.

4 For the meaning of 'container' see PARA 1002 note 1.

5 Carriage of Explosives by Road Regulations 1996, SI 1996/2093, reg 19(1). Without prejudice to the generality of reg 19(1), the operator, driver and any attendant must ensure that the detailed requirements of Sch 7 are complied with: reg 19(2).

6 In accordance with the Classification and Labelling of Explosives Regulations 1983, SI 1983/1140, reg 6(5).

7 Carriage of Explosives by Road Regulations 1996, SI 1996/2093, reg 19(2).

8 Ibid reg 19(4).

UPDATE

994-1012 Carriage of dangerous goods by rail ... Defence

SI 1996/2092, SI 1996/2093, SI 1996/2089 (except regs 3 and 4) and SI 2007/1573 now replaced by Carriage of Dangerous Goods and Use of Transportable Pressure Equipment Regulations 2009, SI 2009/1348, which make provision implementing (1) Euratom Council Directive 89/618, Title II, art 5; (2) European Parliament and EC Council Directive 2008/68 (OJ L260, 30.9.2008, p 13), which applies the Annexes of the European Agreement Concerning the International Carriage of Dangerous Goods by Road; (3) Euratom Council Directive 96/29, Title IX, Section 1 (in relation to carriage by road or rail); and (4) EC Council Directive 1999/36 (amended by EC Commission Directive 2002/50).

Halsbury's Laws of England/EXPLOSIVES (VOLUME 17(2) (REISSUE))/3. SALE, IMPORTATION, EXPORTATION AND CONVEYANCE/(4) CONVEYANCE/(ii) Byelaws and Regulations/C. CARRIAGE BY ROAD/1005. Attendance.

1005. Attendance.

The operator¹ of a vehicle² which is being used for the carriage of explosives³ and any person engaged in the carriage, or having custody and control of the explosives during the carriage must take such steps as it is reasonable for them respectively to take⁴ to ensure that:

- 93 (1) when the vehicle is not parked, a person who has been nominated by the operator to act as an attendant accompanies the driver of the vehicle⁵; and
- 94 (2) when the vehicle is parked and the driver is not present, a person who is competent to ensure the security of the explosives is constantly with the vehicle⁶.

No driver or attendant of a vehicle which is being used for the carriage of explosives may cause or permit any person, other than a member of the vehicle crew, to be carried in the vehicle, for the sole person of transporting that person⁷.

1 For the meaning of 'operator' see PARA 1002 note 1 ante.

2 For the meaning of 'vehicle' see PARA 1002 note 1 ante.

3 For the meaning of 'explosive' see PARA 1000 note 2 ante.

4 Carriage of Explosives by Road Regulations 1996, SI 1996/2093, reg 20(1).

5 Ibid reg 20(1)(a). This does not apply (1) to the carriage of explosives to which the exemptions under Sch 5 para 15 apply (reg 20(2)(a)); (2) to the carriage of explosives where the only explosives being carried are those allocated on classification the UN Number 0336 and in a quantity at or below 5,000 kg (reg 20(2)(b)); (3) to any vehicle in a convoy of more than two vehicles other than the first and last such vehicle (reg 20(2)(c)); (4) where adequate measures for the security of the explosives, in relation to the vehicle, have been taken (reg 20(3)(a)); (5) where the vehicle is: (a) parked on a site; or (b) being used for delivering goods between private premises and a vehicle in the immediate vicinity of those premises; or (c) being used in passing between one part of private premises and another part of those premises situated in the immediate vicinity of that first part where both parts are occupied by the same person, notwithstanding that those parts may be separated by a road, and some or all of the explosives are to be used that day (reg 20(3)(b) (substituted by SI 1999/303)); and (6) the only explosives in the vehicle consist of one or more of the following: (a) blasting explosives not exceeding 50 kg in quantity; (b) detonating cord not exceeding 10 kg in quantity; (c) detonators not exceeding 100 g in quantity or 100 in number (Carriage of Explosives by Road Regulations 1996, SI 1996/2093, reg 20(3)(c)). For the meaning of 'blasting explosive', 'detonating cord' and 'detonator' see reg 2(1).

6 Ibid reg 20(1)(b). This does not apply (1) to the carriage of any explosives specified in Sch 1 Pts I, II or III (reg 20(4)(a)); (2) during stops in a safe and secure place (reg 20(4)(b)); or, in the circumstances mentioned in note 5 heads (4)-(6) supra (reg 20(3)(a)-(c)). 'A safe and secure place' means a safe and secure place within a factory or magazine licensed or lawfully existing under the Explosives Act 1875 or by virtue of a certificate of exemption granted pursuant to the Explosives Act 1875 (Exemptions) Regulations 1979, SI 1979/1378; or within premises under the control of the Ministry of Defence: Carriage of Explosives by Road Regulations 1996, SI 1996/2093, reg 20(5).

7 Ibid reg 20(6).

UPDATE

994-1012 Carriage of dangerous goods by rail ... Defence

SI 1996/2092, SI 1996/2093, SI 1996/2089 (except regs 3 and 4) and SI 2007/1573 now replaced by Carriage of Dangerous Goods and Use of Transportable Pressure Equipment Regulations 2009, SI 2009/1348, which make provision implementing (1) Euratom Council Directive 89/618, Title II, art 5; (2) European Parliament and EC Council Directive 2008/68 (OJ L260, 30.9.2008, p 13), which applies the Annexes of the European Agreement Concerning the International Carriage of Dangerous Goods by Road; (3) Euratom Council Directive 96/29, Title IX, Section 1 (in relation to carriage by road or rail); and (4) EC Council Directive 1999/36 (amended by EC Commission Directive 2002/50).

1005 Attendance

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

Halsbury's Laws of England/EXPLOSIVES (VOLUME 17(2) (REISSUE))/3. SALE, IMPORTATION, EXPORTATION AND CONVEYANCE/(4) CONVEYANCE/(ii) Byelaws and Regulations/C. CARRIAGE BY ROAD/1006. Route of carriage and parking.

1006. Route of carriage and parking.

The operator¹ and driver of a vehicle² used for the carriage of more than 5 tonnes of explosive³ in Division 1.1⁴ must ensure that the route followed is the route, or one of the routes, agreed with the chief officer of police of the relevant police area⁵.

Where any vehicle which is being used for the carriage of explosives is part of a convoy of such vehicles, where practicable, the driver of the vehicle must ensure that there is a distance of more than 50 metres between that vehicle and any other vehicle in the convoy⁶.

Where a driver parks a vehicle which is being used for the carriage of explosives he must apply the parking brake⁷.

Where any vehicle which is being used for the carriage of explosives has stopped for the purpose of loading or unloading the explosives in a public place, the driver of the vehicle must ensure, where practicable, that there is a distance of not less than 50 metres between the vehicle and any other stationary vehicle, whether or not that vehicle is being used for the carriage of explosives⁸.

1 For the meaning of 'operator' see PARA 1002 note 1.

2 For the meaning of 'vehicle' see PARA 1002 note 1.

3 For the meaning of 'explosive' see PARA 1000 note 2 ante.

4 'Division' and 'Division number' have the meanings assigned to them in regulation 2(1) of the Classification and Labelling of Explosives Regulations 1983, SI 1983/1140, reg 2(1) (see PARA 995 ante): Carriage of Explosives by Road Regulations 1996, SI 1996/2093, reg 2(1).

5 Ibid reg 21(1). As to chief officers of police and police areas see POLICE vol 36(1) (2007 Reissue) PARAS 105, 136-138.

6 Ibid reg 21(2).

7 Ibid reg 21(3).

8 Ibid reg 21(4). This does not apply where the only explosives being carried are those specified in reg 3, Sch 5 para 15: reg 21(4) (amended by SI 1999/303).

UPDATE

994-1012 Carriage of dangerous goods by rail ... Defence

SI 1996/2092, SI 1996/2093, SI 1996/2089 (except regs 3 and 4) and SI 2007/1573 now replaced by Carriage of Dangerous Goods and Use of Transportable Pressure Equipment Regulations 2009, SI 2009/1348, which make provision implementing (1) Euratom Council Directive 89/618, Title II, art 5; (2) European Parliament and EC Council Directive 2008/68 (OJ L260, 30.9.2008, p 13), which applies the Annexes of the European Agreement Concerning the International Carriage of Dangerous Goods by Road; (3) Euratom Council Directive 96/29, Title IX, Section 1 (in relation to carriage by road or rail); and (4) EC Council Directive 1999/36 (amended by EC Commission Directive 2002/50).

Halsbury's Laws of England/EXPLOSIVES (VOLUME 17(2) (REISSUE))/3. SALE, IMPORTATION, EXPORTATION AND CONVEYANCE/(4) CONVEYANCE/(ii) Byelaws and Regulations/C. CARRIAGE BY ROAD/1007. Provisions to ensure safe and secure carriage.

1007. Provisions to ensure safe and secure carriage.

The operator¹ of a vehicle² which is being used for the carriage of explosives³ and any person engaged in the carriage, or having custody and control of the explosives during the carriage, must take such steps as is reasonable for them respectively to take to prevent accidents and minimise the harmful effects of any accident which may occur⁴; and must prevent unauthorised access to, or removal of, all or part of the load⁵.

The operator, consignor⁶ and any other person involved in the carriage of explosives by road must ensure that he and those of his employees whose responsibilities are concerned with such carriage receive training so as to enable them to discharge those responsibilities⁷.

No person may smoke or produce an open flame on a vehicle which is being used for the carriage of explosives or in the vicinity of such a vehicle during the loading and unloading of the explosives⁸. Further, no person may bring portable lighting apparatus onto a vehicle if such apparatus comprises a flame or has any metal surface liable to produce sparks⁹.

The operator of a vehicle which is being used for the carriage of explosives must ensure that it is equipped so that the driver can take the measures detailed in the emergency information¹⁰.

No person may cause or permit anything to be done which is liable to create a significant risk or significantly increase any existing risk of a fire or explosion whilst explosives are being carried in any vehicle or container¹¹.

1 For the meaning of 'operator' see PARA 1002 note 1.

2 For the meaning of 'vehicle' see PARA 1002 note 1.

3 For the meaning of 'explosive' see PARA 1000 note 2 ante.

4 Carriage of Explosives by Road Regulations 1996, SI 1996/2093, reg 22(a).

5 Ibid reg 22(b).

6 For the meaning of 'consignor' see PARA 1003 note 4 ante.

7 Carriage of Explosives by Road Regulations 1996, SI 1996/2093, reg 22A(1) (reg 22A added by SI 1999/303). Each employer must keep a record for a minimum of five years of any such training provided by him, and must make a copy of that record available to employee concerned: Carriage of Explosives by Road Regulations 1996, SI 1996/2093, reg 22A(2) (as so added).

8 Ibid reg 23(1).

9 Ibid reg 23(2).

10 Ibid reg 24(1). This does not apply in relation to any trailer which is being used for the carriage of explosives where that trailer is detached from the motor vehicle: reg 24(2). As to emergency information see PARA 1003 note 7 ante.

11 Ibid reg 25(1). For further requirements with which the operator, driver or attendant of a vehicle or container must comply, see reg 25(2). As to certain exceptions where the only explosives being carried are those specified in Sch 5 paras 15, 16(a)-(c), see reg 25(3) (amended by SI 1999/303).

UPDATE

994-1012 Carriage of dangerous goods by rail ... Defence

SI 1996/2092, SI 1996/2093, SI 1996/2089 (except regs 3 and 4) and SI 2007/1573 now replaced by Carriage of Dangerous Goods and Use of Transportable Pressure Equipment Regulations 2009, SI 2009/1348, which make provision implementing (1) Euratom Council Directive 89/618, Title II, art 5; (2) European Parliament and EC Council Directive 2008/68 (OJ L260, 30.9.2008, p 13), which applies the Annexes of the European Agreement Concerning the International Carriage of Dangerous Goods by Road; (3) Euratom Council Directive 96/29, Title IX, Section 1 (in relation to carriage by road or rail); and (4) EC Council Directive 1999/36 (amended by EC Commission Directive 2002/50).

Halsbury's Laws of England/EXPLOSIVES (VOLUME 17(2) (REISSUE))/3. SALE, IMPORTATION, EXPORTATION AND CONVEYANCE/(4) CONVEYANCE/(ii) Byelaws and Regulations/C. CARRIAGE BY ROAD/1008. Accidents and emergencies.

1008. Accidents and emergencies.

In the event of an emergency involving a vehicle¹ which is being used for the carriage of explosives² which cannot be brought under immediate control³ the driver and any attendant⁴, or where neither is present, any person attending the vehicle⁵ must ensure that the appropriate emergency services are notified by the quickest practical means⁶; and the driver and any attendant must also ensure that the operator⁷ of that vehicle is notified by the quickest practical means⁸.

In the event of any accident or emergency the operator, driver and any attendant must ensure that all proper precautions are taken for the safety of persons likely to be affected by ignition or initiation of the explosives and for the security of the explosives⁹.

1 For the meaning of 'vehicle' see PARA 1002 note 1 ante.

2 For the meaning of 'explosive' see PARA 1000 note 2 ante.

3 Carriage of Explosives by Road Regulations 1996, SI 1996/2093, reg 26(1).

4 Ie the attendant appointed under ibid reg 20(1)(a) (see PARA 1005 text and note 5 ante): reg 2(1).

5 Ie in accordance with ibid reg 20(1)(b) (see 1005 text and note 6 ante infra).

6 Ibid reg 26(1)(a).

7 For the meaning of 'operator' see PARA 1002 note 1 ante.

8 Carriage of Explosives by Road Regulations 1996, SI 1996/2093, reg 26(1)(b). On being informed of the occurrence of any such emergency, the operator of the vehicle must inform the Health and Safety Executive by the quickest practical means of the occurrence of that emergency: reg 26(2). As to the Health and Safety Executive see HEALTH AND SAFETY AT WORK vol 52 (2009) PARAS 361-371.

9 Ibid reg 26(3)(a), (b). Without prejudice to the generality of reg 26(3), in the event of any accident or emergency, the driver of the vehicle must take all reasonable steps to ensure that any instructions contained within the emergency information relating to those explosives concerning the measures to be taken by him are complied with: reg 26(4).

UPDATE

994-1012 Carriage of dangerous goods by rail ... Defence

SI 1996/2092, SI 1996/2093, SI 1996/2089 (except regs 3 and 4) and SI 2007/1573 now replaced by Carriage of Dangerous Goods and Use of Transportable Pressure Equipment Regulations 2009, SI 2009/1348, which make provision implementing (1) Euratom Council Directive 89/618, Title II, art 5; (2) European Parliament and EC Council Directive 2008/68 (OJ L260, 30.9.2008, p 13), which applies the Annexes of the European Agreement Concerning the International Carriage of Dangerous Goods by Road; (3) Euratom Council Directive 96/29, Title IX, Section 1 (in relation to carriage by road or rail); and (4) EC Council Directive 1999/36 (amended by EC Commission Directive 2002/50).

Halsbury's Laws of England/EXPLOSIVES (VOLUME 17(2) (REISSUE))/3. SALE, IMPORTATION, EXPORTATION AND CONVEYANCE/(4) CONVEYANCE/(ii) Byelaws and Regulations/C. CARRIAGE BY ROAD/1009. Duration of carriage and delivery.

1009. Duration of carriage and delivery.

The operator¹ and driver of a vehicle² which is being used for the carriage of explosives³ must ensure that⁴:

- 95 (1) the carriage is completed within a reasonable length of time having regard to the distance involved⁵;
- 96 (2) the explosives are delivered to (a) the consignee or his agent⁶; or (b) any other person who is authorised by the consignee to accept custody of the explosives for onward despatch, provided that they are delivered to either a safe and secure place⁷ or a designated parking area⁸ in an airport, a railway transshipment depot or siding, a harbour or harbour area⁹, and, that if they cannot be so delivered, they are returned to the consignor¹⁰ or his agent¹¹; and
- 97 (3) that any trailer, semi-trailer or container¹² containing explosives is not detached from the vehicle except either (a) in a safe and secure place or a designated parking area in an airport, a railway transshipment depot or siding, a harbour or a harbour area¹³; or (b) in an emergency¹⁴.

The operator, driver and any attendant¹⁵ of a vehicle which is being used for the carriage of explosives must ensure that any explosives intended to be delivered to a particular place are unloaded from the vehicle as soon as is reasonably practicable after it arrives at that place¹⁶.

The operator of a vehicle used for the carriage of explosives may not remove any explosives from the consignor's premises unless he is ready immediately to despatch them to the consignee or his agent¹⁷.

1 For the meaning of 'operator' see PARA 1002 note 1 ante.

2 For the meaning of 'vehicle' see PARA 1002 note 1 ante.

3 For the meaning of 'explosive' see PARA 1000 note 2 ante.

4 Carriage of Explosives by Road Regulations 1996, SI 1996/2093, reg 27(1).

5 Ibid reg 27(1)(a).

6 Ibid reg 27(1)(b)(i).

7 I.e. a safe and secure place within the meaning of ibid reg 20(5) (see PARA 1005 ante).

8 'Designated parking area' means (1) in relation to an airport or railway transshipment depot or siding, an area allocated by the occupier as an area for parking vehicles carrying explosives; and (2) in relation to a harbour or harbour area, a parking area designated for the purposes of the Dangerous Substances in Harbour Areas Regulations 1987, SI 1987/37, reg 32: Carriage of Explosives by Road Regulations 1996, SI 1996/2093, reg 27(3)(b). 'Harbour' and 'harbour areas' have the meanings assigned to them in the Dangerous Substances in Harbour Areas Regulations 1987, SI 1987/37, reg 2(1): Carriage of Explosives by Road Regulations 1996, SI 1996/2093, reg 27(3)(a).

9 Ibid reg 27(1)(b)(ii).

10 For the meaning of 'consignor' see PARA 1003 note 4 ante.

11 Carriage of Explosives by Road Regulations 1996, SI 1996/2093, reg 27(1)(b).

12 'Trailer' and semi-trailer' have the same meanings as in the Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078 (see ROAD TRAFFIC vol 40(1) (2007 Reissue) PARA 210): Carriage of Explosives by Road Regulations 1996, SI 1996/2093, reg 2(1). For the meaning of 'container' see PARA 1002 note 1 ante.

13 Ibid reg 27(1)(c)(i).

14 Ibid reg 27(1)(c)(ii).

15 Ie the attendant appointed under ibid reg 20(1)(a) (see PARA 1005 text and note 5 ante): reg 2(1).

16 Ibid reg 27(2).

17 Ibid reg 27(4).

UPDATE

994-1012 Carriage of dangerous goods by rail ... Defence

SI 1996/2092, SI 1996/2093, SI 1996/2089 (except regs 3 and 4) and SI 2007/1573 now replaced by Carriage of Dangerous Goods and Use of Transportable Pressure Equipment Regulations 2009, SI 2009/1348, which make provision implementing (1) Euratom Council Directive 89/618, Title II, art 5; (2) European Parliament and EC Council Directive 2008/68 (OJ L260, 30.9.2008, p 13), which applies the Annexes of the European Agreement Concerning the International Carriage of Dangerous Goods by Road; (3) Euratom Council Directive 96/29, Title IX, Section 1 (in relation to carriage by road or rail); and (4) EC Council Directive 1999/36 (amended by EC Commission Directive 2002/50).

Halsbury's Laws of England/EXPLOSIVES (VOLUME 17(2) (REISSUE))/3. SALE, IMPORTATION, EXPORTATION AND CONVEYANCE/(4) CONVEYANCE/(ii) Byelaws and Regulations/C. CARRIAGE BY ROAD/1010. Minimum age limits for persons engaged in the carriage of explosives.

1010. Minimum age limits for persons engaged in the carriage of explosives.

No person under the age of 18 may use any vehicle¹ for the carriage of explosives², be employed as the driver or attendant³ of such a vehicle, be made responsible for the security of the explosives or be allowed to go on or in such a vehicle except in the presence and under the supervision of a competent person who is at least 18 years of age⁴.

1 For the meaning of 'vehicle' see PARA 1002 note 1 ante.

2 For the meaning of 'explosive' see PARA 1000 note 2 ante.

3 le the attendant appointed under the Carriage of Explosives by Road Regulations 1996, SI 1996/2093, reg 20(1)(a) (see PARA 1005 text and note 5 ante): reg 2(1).

4 Ibid reg 28(1). However, this does not apply to the carriage of any explosives specified in Sch 1 Pt I; or to any explosives specified in Sch 1 Pt II, if the total quantity of such explosives does not exceed 50 kg: reg 28(2).

UPDATE

994-1012 Carriage of dangerous goods by rail ... Defence

SI 1996/2092, SI 1996/2093, SI 1996/2089 (except regs 3 and 4) and SI 2007/1573 now replaced by Carriage of Dangerous Goods and Use of Transportable Pressure Equipment Regulations 2009, SI 2009/1348, which make provision implementing (1) Euratom Council Directive 89/618, Title II, art 5; (2) European Parliament and EC Council Directive 2008/68 (OJ L260, 30.9.2008, p 13), which applies the Annexes of the European Agreement Concerning the International Carriage of Dangerous Goods by Road; (3) Euratom Council Directive 96/29, Title IX, Section 1 (in relation to carriage by road or rail); and (4) EC Council Directive 1999/36 (amended by EC Commission Directive 2002/50).

Halsbury's Laws of England/EXPLOSIVES (VOLUME 17(2) (REISSUE))/3. SALE, IMPORTATION, EXPORTATION AND CONVEYANCE/(4) CONVEYANCE/(ii) Byelaws and Regulations/C. CARRIAGE BY ROAD/1011. Exemption certificates.

1011. Exemption certificates.

The Health and Safety Executive¹ may, by a certificate in writing, exempt any: (1) person or class of person²; (2) explosive or class of explosive³; or (3) vehicle or container or class of vehicle or container⁴, from all or any requirements or prohibitions imposed⁵ and any such exemption may be granted subject to conditions and to a limit of time, and may be revoked at any time by the Health and Safety Executive by a further certificate in writing⁶. The Health and Safety Executive may not grant any such exemption unless, having regard to the circumstances of the case⁷ it is satisfied that the environment, the security of the explosives and the health and safety of persons who are likely to be affected by the exemption will not be prejudiced in consequence of it⁸.

The Secretary of State⁹ may in the interests of national security exempt by a certificate in writing from all or any requirements or prohibitions imposed¹⁰ any particular, or class of: (a) military explosive¹¹; (b) person engaged in the carriage of military explosives¹²; or (c) vehicle used for the carriage of military explosives¹³. Any such exemption may be granted subject to conditions and to a limit of time, and may be revoked at any time by the Secretary of State by a further certificate in writing¹⁴.

1 The Health and Safety Executive is the enforcing authority for the Carriage of Explosives by Road Regulations 1996, SI 1996/2093: reg 30. As to the Health and Safety Executive see HEALTH AND SAFETY AT WORK vol 52 (2009) PARAS 361-371.

2 Ibid reg 29(1)(a).

3 Ibid reg 29(1)(b). For the meaning of 'explosive' see PARA 1000 note 2 ante.

4 Ibid reg 29(1)(c). For the meaning of 'vehicle' see PARA 1002 note 1 ante. For the meaning of 'container' see PARA 1002 note 1 ante.

5 Ie imposed by the Carriage of Explosives by Road Regulations 1996, SI 1996/2093 (as amended).

6 Ibid reg 29(1).

7 Particular regard must be given to (1) the conditions, if any, which it proposes to attach to the exemption (ibid reg 29(2)(a)); and (2) any other requirements imposed by or under any enactment which apply to the case (reg 29(2)(b)).

8 Ibid reg 29(2) (amended by SI 1999/303).

9 As to the Secretary of State see PARA 913 ante.

10 Ie requirements or prohibitions imposed by the Carriage of Explosives by Road Regulations 1996, SI 1996/2093 (as amended).

11 Ibid reg 29(3)(a). As to the meaning of 'military explosive' see PARA 1000 note 7 ante.

12 Ibid reg 29(3)(b).

13 Ibid reg 29(3)(c).

14 Ibid reg 29(3).

UPDATE

994-1012 Carriage of dangerous goods by rail ... Defence

SI 1996/2092, SI 1996/2093, SI 1996/2089 (except regs 3 and 4) and SI 2007/1573 now replaced by Carriage of Dangerous Goods and Use of Transportable Pressure Equipment Regulations 2009, SI 2009/1348, which make provision implementing (1) Euratom Council Directive 89/618, Title II, art 5; (2) European Parliament and EC Council Directive 2008/68 (OJ L260, 30.9.2008, p 13), which applies the Annexes of the European Agreement Concerning the International Carriage of Dangerous Goods by Road; (3) Euratom Council Directive 96/29, Title IX, Section 1 (in relation to carriage by road or rail); and (4) EC Council Directive 1999/36 (amended by EC Commission Directive 2002/50).

Halsbury's Laws of England/EXPLOSIVES (VOLUME 17(2) (REISSUE))/3. SALE, IMPORTATION, EXPORTATION AND CONVEYANCE/(4) CONVEYANCE/(ii) Byelaws and Regulations/C. CARRIAGE BY ROAD/1012. Defence.

1012. Defence.

In any proceedings for an offence for a contravention of any of the provisions relating to the carriage of explosives by road¹ it is a defence for the person charged to prove that: (1) the commission of the offence was due to the act or default of another person who is not one of his employees (the 'other person')²; and (2) he took all reasonable precautions and exercised all due diligence to avoid the commission of the offence³.

Where a contravention of any of those provisions by any person is due to the act or default of some other person, that other person is guilty of the offence which would, but for any defence under the provisions described above available to the first-mentioned person, be constituted by the act or default⁴.

1 The provisions of the Carriage of Explosives by Road Regulations 1996, SI 1996/2093 (as amended): see PARA 1000 et seq ante. For the meaning of 'explosive' see PARA 1000 note 2 ante.

2 Ibid reg 31(1)(a). The person charged is not, without leave of the court, entitled to rely on the defence referred to in reg 31(1) unless, within a period ending seven clear days before the hearing to determine mode of trial, he has served on the prosecutor a notice in writing giving such information identifying or assisting in the identification of the other person, as was then in his possession: reg 31(2).

3 Ibid reg 31(1)(b).

4 Ibid reg 31(3) (substituted by SI 1999/303).

UPDATE

994-1012 Carriage of dangerous goods by rail ... Defence

SI 1996/2092, SI 1996/2093, SI 1996/2089 (except regs 3 and 4) and SI 2007/1573 now replaced by Carriage of Dangerous Goods and Use of Transportable Pressure Equipment Regulations 2009, SI 2009/1348, which make provision implementing (1) Euratom Council Directive 89/618, Title II, art 5; (2) European Parliament and EC Council Directive 2008/68 (OJ L260, 30.9.2008, p 13), which applies the Annexes of the European Agreement Concerning the International Carriage of Dangerous Goods by Road; (3) Euratom Council Directive 96/29, Title IX, Section 1 (in relation to carriage by road or rail); and (4) EC Council Directive 1999/36 (amended by EC Commission Directive 2002/50).

Halsbury's Laws of England/EXPLOSIVES (VOLUME 17(2) (REISSUE))/3. SALE, IMPORTATION, EXPORTATION AND CONVEYANCE/(4) CONVEYANCE/(ii) Byelaws and Regulations/D. CARRIAGE BY AIR AND SEA/1013. Conveyance by air and at sea.

D. CARRIAGE BY AIR AND SEA

1013. Conveyance by air and at sea.

The conveyance of explosives¹ by air is not dealt with by the Explosives Act 1875 but by legislation concerning air traffic, under which rules have been made for the carriage of dangerous goods in aircraft². Similarly, explosives are within the definition of dangerous goods in legislation relating to merchant shipping³, which applies outside harbours and on the high seas. Every operator, every employer of persons aboard a ship or hovercraft and every master of a ship has a duty to handle, stow and carry dangerous goods in a manner which does not create a significant risk to the health or safety of any person⁴.

1 For the meaning of 'explosive' see PARA 905 ante.

2 See the Air Navigation (Dangerous Goods) Regulations 1994, SI 1994/3187 (as amended); and CARRIAGE AND CARRIERS vol 7 (2008) PARA 193 et seq.

3 See the Merchant Shipping Act 1995 s 87(5); the Merchant Shipping (Dangerous Goods and Marine Pollutants) Regulations 1997, SI 1997/2367; and SHIPPING AND MARITIME LAW vol 94 (2008) PARA 657.

4 See the Merchant Shipping (Dangerous Goods and Marine Pollutants) Regulations 1997, SI 1997/2367, regs 2(1), 6(1).

UPDATE

1013-1015 Conveyance by air and at sea ... Marking

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

1013 Conveyance by air and at sea

NOTE 2--SI 1994/3187 replaced by Air Navigation (Dangerous Goods) Regulations 2002, SI 2002/2786.

Halsbury's Laws of England/EXPLOSIVES (VOLUME 17(2) (REISSUE))/3. SALE, IMPORTATION, EXPORTATION AND CONVEYANCE/(4) CONVEYANCE/(ii) Byelaws and Regulations/E. BYELAWS/1014. Publication of byelaws.

E. BYELAWS

1014. Publication of byelaws.

Byelaws framed by any canal undertakers or harbour authority, before being sanctioned by the Secretary of State¹, must be published in such manner as he directs, with a notice of intention to apply for confirmation². The Secretary of State may sanction the byelaws with or without any omission, addition or alteration, or may disallow them³. Advance publication of proposed byelaws may also be required by the Secretary of State under the foregoing powers⁴. The Secretary of State must also receive and consider any objections or suggestions made by any local authority, corporation or persons interested, and may, if he thinks fit, amend the byelaws with a view to meeting such objections and suggestions without again publishing the same⁵.

1 As to the Secretary of State see PARA 913 ante.

2 Explosives Act 1875 s 38. Byelaws, notices and documents directed by or under that Act to be published or advertised must, except as otherwise provided, be published in the place which they affect, by advertisements in local newspapers, or by placards or handbills, or in such manner as the Secretary of State may direct: s 84.

3 Ibid s 38. From time to time, every byelaw may be added to, altered or rescinded by a byelaw made in a like manner and with the like sanction as the original byelaw: s 38.

4 See ibid s 38.

5 Ibid s 38.

UPDATE

1013-1015 Conveyance by air and at sea ... Marking

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

1014 Publication of byelaws

TEXT AND NOTES--Repealed: SI 2005/1082.

Halsbury's Laws of England/EXPLOSIVES (VOLUME 17(2) (REISSUE))/3. SALE, IMPORTATION, EXPORTATION AND CONVEYANCE/(4) CONVEYANCE/(iii) Fireworks/1015. Marking.

(iii) Fireworks

1015. Marking.

No fireworks may be consigned from the factory in which they were made unless each firework bears conspicuously the name of the occupier and the address of the factory¹. This does not apply to fireworks weighing less than one-eighth of an ounce each², aluminium or magnesium torches ('sparklers'), jumping crackers and 'throw-downs'³, and such other fireworks as may be prescribed by regulations of the Secretary of State⁴, but the containers in which they are consigned in bulk and those in which they are sold to the public must bear conspicuously the name of the occupier and the address of the factory⁵. These provisions do not apply to fireworks consigned from a factory for supply under contract to the Crown or a visiting force⁶, nor to fireworks consigned from a factory for transmission to a place outside the United Kingdom, the Channel Islands and the Isle of Man⁷.

An occupier of a factory who contravenes the provisions as to marking of fireworks is liable on summary conviction to a penalty⁸.

Further provision is made under consumer protection legislation as to the manufacture and supply of fireworks⁹.

1 Fireworks Act 1951 s 5(1).

2 Ibid s 5(2)(a).

3 Ibid s 5(2)(b), Schedule.

4 Ibid s 5(2)(c). As to the Secretary of State see PARA 913 ante.

5 Ibid s 5(2).

6 Ibid s 5(3); Visiting Forces and International Headquarters (Application of Law) Order 1999, SI 1999/1736, art 12(2), Sch 6.

7 Fireworks Act 1964 s 1. For the meaning of 'United Kingdom' see PARA 909 note 5 ante.

8 Fireworks Act 1951 s 5(4). The penalty is a fine not exceeding level 1 on the standard scale, or an amount equal to level 1 on the standard scale for every pound weight of fireworks in respect of which the offender is convicted, whichever is the greater: s 5(4) (amended by virtue of the Criminal Justice Act 1982 ss 38, 40). However, the maximum fine in respect of fireworks consigned on any one day is level 3 on the standard scale: Fireworks Act 1951 s 5(4) proviso (as so amended). As to the standard scale see PARA 951 note 9 ante. As to the procedure on prosecution of such offences see PARA 1036 post.

9 See the Fireworks (Safety) Regulations 1997, SI 1997/2294; and SALE OF GOODS AND SUPPLY OF SERVICES vol 41 (2005 Reissue) PARA 604 et seq.

UPDATE

1013-1015 Conveyance by air and at sea ... Marking

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

1015 Marking

TEXT AND NOTES--Fireworks regulations (see PARA 908A.1) may include provision for securing that appropriate information is, and inappropriate information is not, given in relation to fireworks, or fireworks of a description specified in the regulations: Fireworks Act 2003 s 8(1). For the meaning of 'fireworks' see PARA 908A.1 NOTE 1. The provision includes, in particular, provision requiring that a mark, warning or instruction relating to the fireworks be put on or accompany the fireworks, or requiring that information specified in the regulations be given to any person so specified: s 8(2). If fireworks regulations impose any requirement by virtue of s 8, they may contain exceptions from the requirement, or contain provision for the granting of dispensations from the requirement: s 8(3). If fireworks regulations impose any requirement by virtue of s 8, they may contain provision requiring the keeping of records by any person to whom information is given under the regulations: s 8(4). In the exercise of these powers the Secretary of State has made the Fireworks Regulations 2004, SI 2004/1836, which prohibit any person from (1) supplying or exposing for supply (a) any adult firework or sparkler in any premises, unless he displays in a prominent position in the premises a notice, which measures no less than 420 mm by 297 mm and whose letters are no less than 16 mm high, stating the required information; or (b) any adult firework or sparkler in circumstances other than those mentioned in head (a), unless he gives the required information to any person to whom the fireworks are supplied or exposed for supply (reg 10(1) amended by SI 2004/3262); and (2) supplying any firework unless he maintains for a period of three years, beginning with the date on which he supplies the firework, a record of (i) the name and address of the person who supplied the firework to him; (ii) the name and address of the person to whom he is supplying the firework; (iii) the date when the firework was supplied to him; (iv) the date when he supplied the firework to another person; and (v) the total amount of explosives contained in the firework supplied (reg 10(3) amended by SI 2004/3262). 'The required information' means the information that it is illegal to sell adult fireworks or sparklers to anyone under the age of 18, and that it is illegal for anyone under the age of 18 to possess adult fireworks in a public place: reg 10(2) (amended by SI 2004/3262). As to the meaning of 'local licensing authority' see PARA 980. A person who supplies adult fireworks must, if requested by a local licensing authority within the three year period to provide any of the information mentioned in heads (i)-(v), provide to the authority such information as is specified in the request: SI 2004/1836 reg 10(3A) (added by SI 2004/3262). The prohibition in reg 10(3), (3A) does not apply if, in a single transaction, the total amount of explosives contained in the fireworks supplied is less than or equal to 50 kg: reg 10(4) (substituted by SI 2004/3262).

Halsbury's Laws of England/EXPLOSIVES (VOLUME 17(2) (REISSUE))/4. OFFENCES, POWERS, LEGAL PROCEEDINGS, ACCIDENTS AND LOSS/(1) OFFENCES/(i) In general/1016. Summary of offences.

4. OFFENCES, POWERS, LEGAL PROCEEDINGS, ACCIDENTS AND LOSS

(1) OFFENCES

(i) In general

1016. Summary of offences.

The legislation governing explosives creates a number of offences, mentioned throughout this title. For example: breach of an order relating to specially dangerous explosives¹; illegal manufacture at an unauthorised place²; illegal keeping at an unauthorised place³; breach of a factory or magazine licence⁴; breach of the general rules for a factory or magazine⁵, for stores⁶ or for registered premises⁷; breach of the special rules for workmen in a factory or magazine⁸ or in stores⁹; offences relating to sale¹⁰; breach of the general rules of classification and labelling or packing for conveyance¹¹; failure to notify a change of occupancy¹²; and contravention of regulations relating to carriage of explosives by rail¹³ or road¹⁴. Further, it is an offence to throw or set alight a firework in a highway, thoroughfare or public place¹⁵; to pull down, without lawful authority, a notice, copy of rules or document displayed in pursuance of the Explosives Act 1875 or one of the special rules¹⁶; to use explosive substances for the taking or destroying of fish¹⁷; to place an explosive substance in or against a post office letter box or telephone kiosk or cabinet¹⁸; to attempt to send, or to send, or to procure to be sent a postal packet enclosing any explosive substance¹⁹; to make malicious use of explosives to cause injury to life or property²⁰; to cause an explosion likely to endanger life or damage property²¹; to do an act with the intent to cause an explosion²²; to make or possess an explosive substance in circumstances that give rise to the reasonable suspicion that the substance has not been made or is not possessed for a lawful purpose²³; to be an accessory to any crime under the Explosive Substances Act 1883²⁴; to fail to give notice of an accident²⁵; to tamper with detained explosives²⁶; or to trespass or commit dangerous acts upon premises where explosives are made or kept²⁷.

1 See PARA 911 ante.

2 See PARA 925 ante.

3 See PARA 927 ante.

4 See PARA 938 ante.

5 See PARA 941 ante.

6 See PARA 959 ante.

7 See PARA 966 ante.

8 See PARA 942 ante.

9 See PARA 960 ante.

10 See PARAS 973-980 ante.

11 See PARAS 904, 989 ante.

- 12 See PARA 944 ante.
- 13 See PARAS 990-999 ante.
- 14 See PARAS 1000-1012 ante.
- 15 See PARA 1020 post.
- 16 See PARA 1020 post.
- 17 See PARA 1021 post.
- 18 See PARA 1021 post.
- 19 See PARA 1021 post.
- 20 See PARA 1021 post.
- 21 See PARA 1022 post.
- 22 See PARA 1023 post.
- 23 See PARA 1024 post.
- 24 See PARA 1025 post.
- 25 See PARAS 1041, 1042 post.
- 26 See PARA 1028 post.
- 27 See PARAS 1018, 1019 post.

UPDATE

1016-1043 Offences, Powers, Legal Proceedings, Accidents and Loss

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

Halsbury's Laws of England/EXPLOSIVES (VOLUME 17(2) (REISSUE))/4. OFFENCES, POWERS, LEGAL PROCEEDINGS, ACCIDENTS AND LOSS/(1) OFFENCES/(i) In general/1017. Penalties for offences; orders for remedy; forfeiture.

1017. Penalties for offences; orders for remedy; forfeiture.

Standard penalties are provided for most offences in connection with the statutory requirements as to explosives¹. A person² guilty of an offence under the Explosives Acts 1875³ and 1923, the Emergency Laws (Miscellaneous Provisions) Act 1953 and the regulations, orders or other instruments of a legislative character made or having effect under those Acts is liable to a penalty⁴.

Where a person is convicted of such an offence in respect of any matters which appear to the court to be matters which it is in his power to remedy, the court may, in addition to or instead of imposing any punishment, order him, within such time as may be fixed by the order, to take such steps as may be specified in the order for remedying those matters⁵.

Where a person is convicted of an offence consisting of acquiring or attempting to acquire, possessing or using an explosive article or substance (within the meaning of the Explosives Act 1875) in contravention of any of the provisions of that Act⁶, the court by or before which he is convicted may order the article or substance in question to be forfeited and either destroyed or dealt with in such other manner as the court may order⁷.

1 For the meaning of 'explosive' see PARA 905 ante.

2 'Person' includes any body of persons corporate or unincorporate: Interpretation Act 1978 ss 5, 22, 23, Sch 1, Sch 2 para 4(1) (amended by the Family Law Reform Act 1987 s 33(1), (4), Sch 2 para 74, Sch 4). Where an offence is proved to have been committed with the consent or connivance of, or to have been attributable to any neglect on the part of, an officer of a body corporate, that officer, as well as the body corporate, may be proceeded against: Health and Safety at Work etc Act 1974 s 37(1).

3 This does not apply to the Explosives Act 1875 ss 30-32 (ss 31, 32 as amended) (see PARAS 973-976 ante), 80 (as amended) (see PARA 1020 post), 119 (applying to Northern Ireland): Health and Safety at Work etc Act 1974 s 53(1) (as amended), Sch 1. See also HEALTH AND SAFETY AT WORK vol 52 (2009) PARA 302.

4 See *ibid* ss 33(3) (as amended), (4) (as amended), 53(1), Sch 1. Where no other penalty is specified, such a person is liable, on summary conviction, to a fine not exceeding the prescribed sum, and on conviction on indictment, if the offence is one to which s 33(3)(b)(i) applies, to imprisonment for a term not exceeding two years, or a fine, or both; or if the offence is not one to which s 33(3)(b)(ii) applies, to a fine, or both: s 33(3). As to the institution of proceedings for prosecution of an offence see PARA 1031 post. See also generally SENTENCING AND DISPOSITION OF OFFENDERS.

5 *Ibid* s 42(1). The time fixed may be extended by a further order: see s 42(2). Where a person is ordered under s 42(1) to remedy any matters, that person is not liable under any of the relevant statutory provisions in respect of those matters in so far as they continue during the time fixed by the order or any further time allowed under s 42(2): s 42(3). See also HEALTH AND SAFETY AT WORK vol 53 (2009) PARA 857.

6 Health and Safety at Work etc Act 1974 s 33(4)(c).

7 *Ibid* s 42(4). An opportunity must first be given to any person claiming to be the owner of or otherwise interested in the article or substance, and applying to the court to be heard, to show cause why the order should not be made: s 42(5). As to the procedure on forfeiture under the Explosives Act 1875 ss 30, 32 (as amended) or 73 (repealed, except in so far as it relates to the powers of a constable) see PARA 1038 post.

UPDATE

1016-1043 Offences, Powers, Legal Proceedings, Accidents and Loss

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

1017 Penalties for offences; orders for remedy; forfeiture

NOTES--Certain persons or indorsements mentioned in this paragraph are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

TEXT AND NOTES 3, 4--References to 1875 Act ss 30-32, 80, 1923 Act and 1953 Act (all repealed) omitted: 1974 Act Sch 1 (amended by Fireworks Act 2003 Schedule; and SI 2005/1082).

NOTE 4--1974 Act s 33(3), (4) substituted: see further HEALTH AND SAFETY AT WORK vol 53 (2009) PARA 853.

Halsbury's Laws of England/EXPLOSIVES (VOLUME 17(2) (REISSUE))/4. OFFENCES, POWERS, LEGAL PROCEEDINGS, ACCIDENTS AND LOSS/(1) OFFENCES/(i) In general/1018. Trespass.

1018. Trespass.

Any person who enters without permission or otherwise trespasses upon any factory, magazine or store¹, or the land immediately adjoining which is in the same occupation, or on any wharf² for which byelaws are made by the occupier³, is guilty of an offence and may be forthwith removed by any constable or by the occupier or any of his agents or servants or persons authorised by him⁴. This provision also protects government factories, magazines and stores⁵, including those of the Atomic Energy Authority⁶, and such premises when occupied by the service authorities of a visiting force or an international headquarters⁷.

1 For the meaning of 'magazine' and 'store' see PARA 909 notes 1, 2 ante.

2 For the meaning of 'wharf' see PARA 909 note 3 ante.

3 See PARA 993 ante.

4 Explosives Act 1875 s 77 (s 77 amended by the Explosives Acts 1875 and 1923 etc (Repeals and Modifications) Regulations 1974, SI 1974/1885, regs 2(b), 9, Sch 2 para 19). As to the penalties for such an offence see PARA 1017 ante. The occupier is required to post up in a conspicuous place a notice warning all persons of the penalties attaching to trespass, but the absence of such a notice does not excuse a trespasser: Explosives Act 1875 s 77 (as so amended).

5 See ibid s 97 proviso (amended by the Road Traffic (Carriage of Explosives) Regulations 1989, SI 1989/615, reg 19).

6 Atomic Energy Authority Act 1954 s 6(4), Sch 3 (as amended). See FUEL AND ENERGY vol 19(3) (2007 Reissue) PARA 1363.

7 Visiting Forces and International Headquarters (Application of Law) Order 1999, SI 1999/1736, art 12(2), Sch 6.

UPDATE

1016-1043 Offences, Powers, Legal Proceedings, Accidents and Loss

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

1018 Trespass

TEXT AND NOTES--Repealed: SI 2005/1082.

Halsbury's Laws of England/EXPLOSIVES (VOLUME 17(2) (REISSUE))/4. OFFENCES, POWERS, LEGAL PROCEEDINGS, ACCIDENTS AND LOSS/(1) OFFENCES/(i) In general/1019. Dangerous acts.

1019. Dangerous acts.

Any person other than the occupier¹ of, or person employed in or about, any factory, magazine or store² who is found committing any act which tends to cause explosion or fire in or about such factory, magazine or store is guilty of an offence³. The same applies to government establishments and premises occupied by a visiting force⁴.

1 For the meaning of 'occupier' see PARA 926 note 1 ante.

2 For the meaning of 'magazine' and 'store' see PARA 909 notes 1, 2 ante.

3 Explosives Act 1875 s 77 (amended by the Explosives Acts 1875 and 1923 etc (Repeals and Modifications) Regulations 1974, SI 1974/1885, regs 2(b), 9, Sch 2 para 19). As to the penalties for such an offence see PARA 1017 ante. The occupier is required to post notice of this prohibition as in the case of trespass: see PARA 1018 note 4 ante.

4 See the enactments cited in PARA 1018 notes 5-7 ante.

UPDATE

1016-1043 Offences, Powers, Legal Proceedings, Accidents and Loss

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

Halsbury's Laws of England/EXPLOSIVES (VOLUME 17(2) (REISSUE))/4. OFFENCES, POWERS, LEGAL PROCEEDINGS, ACCIDENTS AND LOSS/(1) OFFENCES/(i) In general/1020. Miscellaneous offences.

1020. Miscellaneous offences.

To throw a firework into, or to set it alight in, a highway, street, thoroughfare or public place is an offence¹. A person who, without due authority, pulls down a notice, copy of rules or document displayed in pursuance of the Explosives Act 1875, or of the special rules, is guilty of an offence². Explosives³ may not be deposited in any receptacle or place appropriated for refuse⁴, or handed to any dustman or refuse collector, and an explosive may not be conveyed in any carriage or boat appropriated for the removal of refuse⁵.

1 Explosives Act 1875 s 80. A person guilty of such an offence is liable, on summary conviction, to a fine not exceeding level 5 on the standard scale: s 80 (amended by the Consumer Protection Act 1987 s 48(1), Sch 4 para 1). As to the standard scale see PARA 951 note 9 ante. See also the Metropolitan Police Act 1839 s 54 para 15 (as amended); the Town Police Clauses Act 1847 s 28 (as amended), which create further offences relating to lighting and throwing fireworks, missiles, etc; HIGHWAYS, STREETS AND BRIDGES vol 21 (2004 Reissue) PARA 345.

2 Explosives Act 1875 s 82 (amended by the Criminal Damage Act 1971 ss 11(8), 12(3)-(6), Schedule, Pt II; Explosives Acts 1875 and 1923 etc (Repeals and Modifications) Regulations 1974, SI 1974/1885, regs 2(b), 9, Sch 2 para 21). As to the special rules see PARAS 942, 960 ante. As to the penalties for such an offence see PARA 1017 ante.

3 For the meaning of 'explosive' see PARA 905 ante.

4 Thus, eg, placing a partly burnt or defective firework into a dustbin may constitute an offence.

5 Order of the Secretary of State (No 11), SR & O 1924/1129, byelaw 3 (amended by SR & O 1939/1787; SR & O 1943/1252). The penalty is £10 for a first, and £20 for a subsequent offence: see byelaw 5 (amended by SR & O 1939/1787; SR & O 1943/1252).

UPDATE

1016-1043 Offences, Powers, Legal Proceedings, Accidents and Loss

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

1020-1021 Miscellaneous offences, Offences under other enactments

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

1020 Miscellaneous offences

TEXT AND NOTE 1--1875 Act s 80 prospectively repealed: Fireworks Act 2003 Schedule.

TEXT AND NOTE 2--1875 Act s 82 repealed: SI 2005/1082.

Halsbury's Laws of England/EXPLOSIVES (VOLUME 17(2) (REISSUE))/4. OFFENCES, POWERS, LEGAL PROCEEDINGS, ACCIDENTS AND LOSS/(1) OFFENCES/(i) In general/1021. Offences under other enactments.

1021. Offences under other enactments.

Offences in regard to explosives are also created by other statutes. The use of any explosive substance for the taking or destruction of fish is an offence punishable summarily by a fine not exceeding £200 (or in the case of a second or subsequent conviction £400), or on indictment by imprisonment for a term not exceeding two years or a fine or both¹. It is an offence, punishable summarily by a fine not exceeding £100 or on indictment by imprisonment for a term not exceeding one year, to place or attempt to place an explosive substance in or against a post office letter box or telephone kiosk or cabinet². The same penalties attach to sending or attempting to send or procuring to be sent a postal packet enclosing any explosive substance³.

The malicious use of explosives to cause injury to life or property is dealt with in the Explosive Substances Act 1883⁴, and also in the Offences against the Person Act 1861⁵ and the Criminal Damage Act 1971⁶.

Contravention of the Fireworks (Safety) Regulations 1997⁷ is an offence, which may be prosecuted under the Consumer Protection Act 1987⁸.

1 Salmon and Freshwater Fisheries Act 1975 ss 5(1) (as amended), (4), 37, Sch 4, Pt I (as amended): see AGRICULTURE AND FISHERIES vol 1(2) (2007 Reissue) PARA 789 et seq.

2 Post Office Act 1953 s 60 (as amended): see POST OFFICE vol 36(2) (Reissue) PARA 174.

3 Post Office Act 1953 s 11(1)(a), (2) (as amended): see POST OFFICE vol 36(2) (Reissue) PARA 88.

4 See PARAS 1022-1025 post.

5 See CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(1) (2006 Reissue) PARA 125 et seq.

6 See CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(1) (2006 Reissue) PARAS 334-336.

7 See the Fireworks (Safety) Regulations 1997, SI 1997/2294; see SALE OF GOODS AND SUPPLY OF SERVICES vol 41 (2005 Reissue) PARA 604 et seq.

8 See *ibid* reg 12.

UPDATE

1016-1043 Offences, Powers, Legal Proceedings, Accidents and Loss

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

1020-1021 Miscellaneous offences, Offences under other enactments

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

1021 Offences under other enactments

TEXT AND NOTES 7, 8--Any person who contravenes a prohibition imposed by fireworks regulations (see PARA 908A.1) is guilty of an offence: Fireworks Act 2003 s 11(1). Any person who fails to comply with a requirement imposed by or under fireworks regulations to give or not to give information (see PARA 1015) is guilty of an offence: s 11(2). Where a requirement to give information is imposed by or under fireworks regulations, a person is guilty of an offence if, in giving the information, he makes a statement which he knows is false in a material particular, or recklessly makes a statement which is false in a material particular: s 11(3). A person guilty of an offence under s 11 is liable on summary conviction to imprisonment for a term not exceeding six months, or to a fine not exceeding level 5 on the standard scale, or to both: s 11(4). As to the standard scale see PARA 951. Fireworks regulations may not provide for any contravention of the regulations to be an offence: s 11(5). The Consumer Protection Act 1987 s 11(3)(c), (e) (see SALE OF GOODS AND SUPPLY OF SERVICES vol 41 (2005 Reissue) PARA 539 TEXT AND NOTES 13, 14) apply in relation to fireworks regulations as to regulations under s 11, but as if references to an offence under s 12 were references to an offence under the 2003 Act s 11: s 11(6). The 1987 Act s 39 (see SALE OF GOODS AND SUPPLY OF SERVICES vol 41 (2005 Reissue) PARA 541) applies to offences under the 2003 Act s 11(1), (2), and the 1987 Act s 40(1) (see SALE OF GOODS AND SUPPLY OF SERVICES vol 41 (2005 Reissue) PARA 542) has effect accordingly: 2003 Act s 11(7). In proceedings against any person for an offence of contravening a prohibition imposed by fireworks regulations made by virtue of s 3(1), it is a defence for that person to show that he had no reason to suspect that the person to whom he supplied, offered to supply or agreed to supply the fireworks was below the age specified in the regulations: s 11(8). The 1987 Act s 40(2), (3) (see SALE OF GOODS AND SUPPLY OF SERVICES vol 41 (2005 Reissue) PARA 542) applies to an offence under the 2003 Act s 11 as to an offence under the 1987 Act: 2003 Act s 11(9). A magistrates' court may try an information in respect of an offence under s 11 arising from a contravention of a prohibition imposed by the Fireworks Regulations 2004, SI 2004/1836 (see PARA 980), if the information is laid within 12 months from the time when the offence was committed: reg 13.

The Consumer Protection Act 1987 ss 27 (apart from s 27(1)(b)), 28(1)(a), (2)-(4) (apart from the references to forfeiture and suspension notices), 29(1)-(5), (6)(a), (7), 30(1)-(8) (apart from the references to forfeiture and suspension notices), 32, 33 (apart from s 33(2)(a)(ii), (3)(a)(ii)), 34, 35, (apart from s 35(1)(b), (2)(b)), 37, 41 and 44 (see SALE OF GOODS AND SUPPLY OF SERVICES), apply in relation to fireworks regulations as to regulations under s 11: 2003 Act s 12(1), (2). Provision has been made for the transfer of certain enforcement duties imposed by the 1987 Act s 27(1) in so far as the duties are, by virtue of the 2003 Act s 12(1), exercisable in relation to the enforcement of SI 2004/1836: reg 12 (amended by SI 2004/3262).

Halsbury's Laws of England/EXPLOSIVES (VOLUME 17(2) (REISSUE))/4. OFFENCES, POWERS, LEGAL PROCEEDINGS, ACCIDENTS AND LOSS/(1) OFFENCES/(ii) Endangering Life or Injuring Property/1022. Causing explosion likely to endanger life etc.

(ii) Endangering Life or Injuring Property

1022. Causing explosion likely to endanger life etc.

A person who in the United Kingdom¹ or (being a citizen of the United Kingdom and colonies) in the Republic of Ireland unlawfully and maliciously² causes by any explosive substance³ an explosion of a nature likely to endanger life or to cause serious injury to property, whether any injury to person or property has been actually caused or not, is guilty of an offence⁴. A person guilty of this offence is liable on conviction on indictment to imprisonment for life⁵.

¹ For the meaning of 'United Kingdom' see PARA 909 note 5 ante.

² As to the meaning of 'maliciously' see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(1) (2006 Reissue) PARAS 8, 124.

³ In the Explosive Substances Act 1883, unless the context otherwise requires, 'explosive substances' includes any materials for making any explosive substance; also any apparatus, machine, implement or materials used, or intended to be used, or adapted for causing, or adapted for causing, or aiding in causing, any explosion in or with any explosive substance; also any part of any such apparatus, machine or implement: Explosive Substances Act 1883 s 9(1). See *R v Charles* (1892) 17 Cox CC 499 (part of a vessel filled with an explosive substance adapted for causing an explosion); *R v Downey* [1971] NI 224, CCA (shot gun is an explosive substance). See also *R v Fegan* [1972] NI 80, CCA (pistol and ammunition). 'Explosive substances' also includes the definition given in the Explosives Act 1875 (see PARA 905 ante): *R v Wheatley* [1979] 1 All ER 954, [1979] 1 WLR 144, CA. See further *R v Bouch* [1983] QB 246, [1982] 3 All ER 918, CA (explosive substance includes a petrol bomb).

⁴ Explosive Substances Act 1883 s 2 (substituted by the Criminal Jurisdiction Act 1975 s 7(1), (3)). A person of any nationality may be charged with this offence if it is done in connection with the offence of hijacking committed or attempted by him on board an aircraft (wherever registered) and while outside the United Kingdom: see AIR LAW vol 2 (2008) PARA 625. An offence under the Explosive Substances Act 1883 s 2, may constitute an 'act of violence' for the purposes of the Aviation Security Act 1982: see ss 2(7)(a), 10(2); and AIR LAW vol 2 (2008) PARAS 331, 628. A person who does, outside the United Kingdom, any act which would otherwise constitute an offence under Explosive Substances Act 1883 s 2, is guilty of that offence if he does it in connection with an offence under the Aviation and Maritime Security Act 1990 s 9, 10, 11, 12 (see AIR LAW; CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(1) (2006 Reissue) PARA 127): s 14(1), (2).

⁵ Explosive Substances Act 1883 s 2 (as substituted: see note 3 supra). As to the punishment of accessories see PARA 1025 post. As to the institution of proceedings see PARA 1032 post.

UPDATE

1016-1043 Offences, Powers, Legal Proceedings, Accidents and Loss

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

Halsbury's Laws of England/EXPLOSIVES (VOLUME 17(2) (REISSUE))/4. OFFENCES, POWERS, LEGAL PROCEEDINGS, ACCIDENTS AND LOSS/(1) OFFENCES/(ii) Endangering Life or Injuring Property/1023. Doing act with intent to cause explosion.

1023. Doing act with intent to cause explosion.

A person who in the United Kingdom or a dependency¹ or (being a citizen of the United Kingdom and Colonies) elsewhere unlawfully and maliciously² (1) does any act with intent to cause, or conspires to cause, by an explosive substance³, an explosion of a nature likely to endanger life, or to cause serious injury to property, whether in the United Kingdom or the Republic of Ireland, or (2) makes or has in his possession⁴ or under his control an explosive substance with intent by means of it to endanger life, or cause serious injury to property, whether in the United Kingdom or the Republic of Ireland, or to enable any other person so to do, is guilty of an offence⁵.

1 'Dependency' means the Channel Islands, the Isle of Man and any colony, other than a colony for whose external relations a country other than the United Kingdom is responsible: Explosive Substances Act 1883 s 3(2) (s 3 substituted by the Criminal Jurisdiction Act 1975 s 7(1), (3)). For the meaning of 'United Kingdom' see PARA 909 note 5 ante.

2 For the meaning of 'maliciously' see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(1) (2006 Reissue) PARAS 8, 124.

3 For the meaning of 'explosive substance' see PARA 1022 note 3 ante.

4 Before conviction for an offence of having an explosive substance in his possession with intent to endanger life or cause damage to property, there must be corroborative evidence that the accused knew the nature of the substance which he acquired, retained possession of or permitted to remain on his premises: *Black v HM Advocate* 1974 SLT 247.

5 Explosive Substances Act 1883 s 3(1) (as substituted: see note 1 supra). An offence is committed whether or not an explosion takes place and whether or not an injury to person or property is actually caused: s 3(1) (as so substituted). A person guilty of the offence is liable on conviction on indictment to imprisonment for life and to forfeiture of the explosive substance: s 3(1) (as so substituted; and amended by the Criminal Law Act 1977 s 33; and the Criminal Law (Amendment) (Northern Ireland) Order 1977, SI 1977/1249). See also PARA 1022 note 5 ante. As to the procedure on forfeiture see PARAS 1028, 1038 post.

UPDATE

1016-1043 Offences, Powers, Legal Proceedings, Accidents and Loss

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

Halsbury's Laws of England/EXPLOSIVES (VOLUME 17(2) (REISSUE))/4. OFFENCES, POWERS, LEGAL PROCEEDINGS, ACCIDENTS AND LOSS/(1) OFFENCES/(ii) Endangering Life or Injuring Property/1024. Making or possessing etc explosive substances.

1024. Making or possessing etc explosive substances.

A person who makes or knowingly¹ has in his possession² or under his control any explosive substance³ under such circumstances as to give rise to a reasonable suspicion that he is not making it, or does not have it in his possession or under his control, for a lawful object, commits an offence, unless he can show that he made it or had it in his possession or under his control for a lawful object⁴.

A person guilty of the offence is liable to imprisonment for a term not exceeding 14 years, and forfeiture of the explosive substance⁵.

1 It must be shown not only that the accused knowingly had the substance in his possession, but also that he knew it was an explosive substance; if the possession was under such circumstances as to give rise to a reasonable suspicion that he did not have it in his possession for a lawful object, a jury may infer knowledge if satisfied that it was in his possession for an unlawful object: *R v Hallam* [1957] 1 QB 569 at 573, [1957] 1 All ER 665 at 666, CCA. See also note 4 infra.

The omission of 'knowingly' from the particulars of offence in the indictment renders the indictment defective without necessarily resulting in any subsequent conviction being quashed: see *R v McVitie* [1960] 2 QB 483, [1960] 2 All ER 498, CCA; *R v Stewart* (1959) 44 Cr App Rep 29, CCA. As to drafting the indictment charging a statutory offence see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(3) (2006 Reissue) PARA 1218.

2 As to the liability of each member of a confederacy for the possession of explosive substances by another see *R v Charles* (1892) 17 Cox CC 499. See also CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(1) (2006 Reissue) PARA 53.

3 For the meaning of 'explosive substance' see PARA 1022 note 3 ante.

4 Explosive Substances Act 1883 s 4(1). The lawful object is not confined to a purpose taking place in the United Kingdom, the lawfulness of which is to be defined by English law: *R v Berry* [1985] AC 246, [1984] 2 All ER 296, HL. Accordingly, where explosives are manufactured in the United Kingdom with the object of using them outside the jurisdiction, an offence is committed unless it is shown that they were to be used for a lawful purpose there: *R v Berry* [1985] supra. As to protection from threatened danger as a lawful object for possession of an explosive substance see *R v Fegan* [1972] NI 80, CCA; *A-G's Reference (No 2 of 1983)* [1984] QB 456, [1984] 1 All ER 988, CA. If the defence presents a credible lawful object, the judge must deal with this in his summing up: see *R v Fegan* supra. For the meaning of 'United Kingdom' see PARA 909 note 5 ante.

5 Explosive Substances Act 1883 s 4(1) (amended by virtue of the Criminal Justice Act 1948 s 1(1), (2)). See PARA 1022 note 5 ante. In proceedings under the Explosive Substances Act 1883 s 4(1) (as so amended), as to the competence and compellability of the accused's spouse see the Police and Criminal Evidence Act 1984 s 80. Section 80 is prospectively amended by the Youth Justice and Criminal Evidence Act 1999 s 67(1), (3), Sch 4 paras 12, 13, Sch 6 as from a day to be appointed but at the date at which this volume states the law no such date had been appointed. As to the competence and compellability of the accused's spouse in criminal proceedings generally see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(3) (2006 Reissue) PARA 1405. As to the procedure on forfeiture see PARAS 1028, 1038 post.

UPDATE

1016-1043 Offences, Powers, Legal Proceedings, Accidents and Loss

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

1024 Making or possessing etc explosive substances

TEXT AND NOTES--As to offences for contravention of regulations which prohibit the possession of fireworks, see PARA 1021.

Halsbury's Laws of England/EXPLOSIVES (VOLUME 17(2) (REISSUE))/4. OFFENCES, POWERS, LEGAL PROCEEDINGS, ACCIDENTS AND LOSS/(1) OFFENCES/(ii) Endangering Life or Injuring Property/1025. Accessory to crime.

1025. Accessory to crime.

A person who, within or without Her Majesty's dominions¹, by the supply of or solicitation for money, the providing of premises, the supply of materials, or in any manner whatsoever, procures, counsels, aids, abets or is accessory to the commission of any crime under the Explosive Substances Act 1883 commits an offence².

An accessory may be tried and punished for that crime as if he had been guilty as a principal³.

¹ The offence can only be committed outside Her Majesty's dominions by a subject of Her Majesty: Explosive Substances Act 1883 s 5. For the meaning of 'Her Majesty's dominions' see COMMONWEALTH vol 13 (2009) PARA 707.

² Ibid s 5 (amended by virtue of the Criminal Law Act 1967 s 12(5)(a)).

³ Explosive Substances Act 1883 s 5. As to the institution of proceedings see PARA 1032 post. Apart from this special statutory provision as to accessories, a person may be convicted of aiding and abetting an offence under s 4(1) (as amended) (see PARA 1024 ante) if (1) he knew that the principal offender had explosives in his possession or under his control; (2) he knew facts giving rise to a reasonable suspicion that the principal offender did not have those explosives in his possession or under his control for a lawful object; and (3) he was present actively encouraging or in some way helping the principal offender in the commission of this offence: *R v McCarthy* [1964] 1 All ER 95, [1964] 1 WLR 196, CCA.

UPDATE

1016-1043 Offences, Powers, Legal Proceedings, Accidents and Loss

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

Halsbury's Laws of England/EXPLOSIVES (VOLUME 17(2) (REISSUE))/4. OFFENCES, POWERS, LEGAL PROCEEDINGS, ACCIDENTS AND LOSS/(2) POWERS OF ARREST, SEARCH, SAMPLING AND DESTRUCTION/1026. Arrest without warrant.

(2) POWERS OF ARREST, SEARCH, SAMPLING AND DESTRUCTION

1026. Arrest without warrant.

Any person found committing an act which is an offence under the Explosives Act 1875, and which tends to cause explosion or fire in or about a factory, magazine, store, railway, canal, harbour, wharf, carriage, ship or boat¹, may be apprehended without warrant by a constable or an officer of the local authority², or by the occupier³ of such factory, magazine, store or wharf or any agent or servant of his or other person authorised by him, or by any agent or servant of, or other person authorised by, the railway or canal undertaker⁴ or harbour authority⁵, and be removed from the place at which he is arrested, and taken as soon as conveniently may be before a magistrates' court⁶. This provision extends to factories, magazines and stores, or land immediately adjoining them, occupied by the government⁷.

1 For the meaning of 'magazine' see PARA 909 note 1; for the meaning of 'store' see PARA 909 note 2 ante; for the meaning of 'railway' see PARA 917 note 3; for the meaning of 'canal' see PARA 917 note 4 ante; for the meaning of 'harbour' see PARA 921 note 5 ante; for the meaning of 'wharf' see PARA 909 note 3 ante; for the meaning of 'carriage' see PARA 909 note 9 ante; and for the meanings of 'ship' and 'boat' see PARA 909 note 8 ante.

2 As to local authorities see PARA 921 ante.

3 For the meaning of 'occupier' see PARA 926 note 1 ante.

4 See PARA 992 note 1 ante.

5 For the meaning of 'harbour authority' see PARA 921 note 6 ante.

6 Explosives Act 1875 s 78 (amended by the Explosives Acts 1875 and 1923 etc. (Repeals and Modifications) Regulations 1974, SI 1974/1885, regs 2(b), 9, Sch 2 para 20; and the Police and Criminal Evidence Act 1984 ss 26(1), 119(2), 120, Sch 7, Pt I). As to arrest by a police constable see the Police and Criminal Evidence Act 1984 s 25.

7 See the Explosives Act 1875 s 97 proviso (as amended); and the enactments cited in PARA 1018 notes 6, 7 ante.

UPDATE

1016-1043 Offences, Powers, Legal Proceedings, Accidents and Loss

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

1026 Arrest without warrant

TEXT AND NOTES--Repealed: SI 2005/1082.

Halsbury's Laws of England/EXPLOSIVES (VOLUME 17(2) (REISSUE))/4. OFFENCES, POWERS, LEGAL PROCEEDINGS, ACCIDENTS AND LOSS/(2) POWERS OF ARREST, SEARCH, SAMPLING AND DESTRUCTION/1027. Powers of search.

1027. Powers of search.

If any constable who is specially authorised¹ has reasonable cause to believe that any offence has been or is being committed with respect to any explosive² in any place³, or that any explosive is in any such place in contravention of the Explosives Act 1875 or that the provisions of that Act are not duly observed in any place, he may, on producing, if demanded, his authority, enter that place, if need be by force, at any time⁴ and examine the place, and search for and take samples of any explosive and ingredient, or of any substance reasonably supposed to be an explosive, or of such ingredient which may be found there⁵. When a constable so enters and searches under a written authority, a special written report of every act done by him in pursuance of that authority and of the grounds on which it was done must be sent forthwith to the Secretary of State⁶ by the person by whom or under whose authority it was done⁷.

Inspectors appointed by the Health and Safety Executive⁸ have general powers of entry and search for the purpose of carrying into effect any of the statutory provisions as to explosives within the Executive's field of responsibility⁹.

1 He specially authorised either (1) by a warrant of a justice, which may be granted upon reasonable ground being assigned on oath; or (2) by a written order from a superintendent or other police officer of equal or superior rank, or from an inspector of explosives of the Health and Safety Executive (see PARA 914 ante), where it appears to that superintendent, officer or inspector that the case is one of emergency and that the delay in obtaining a warrant would be likely to endanger life: Explosives Act 1875 s 73 (amended by the Explosives Acts 1875 and 1923 etc (Repeals and Modifications) Regulations 1974, SI 1974/1885, regs 2(a), 9, Sch 1).

2 For the meaning of 'explosive' see PARA 905 ante.

3 This means any place, whether a building or not, or a carriage, boat or ship: Explosives Act 1875 s 73 (as amended: see note 1 supra). For the meaning of 'carriage', 'boat' and 'ship' see PARA 909 notes 8, 9 ante.

4 This includes a Sunday: *ibid* s 73 (as amended: see note 1 supra).

5 *Ibid* s 73 (as amended: see note 1 supra). Any person who, by himself or by others, fails to admit into any place occupied by him or under his control, or in any way obstructs, a constable entitled to search under the Explosives Act 1875 s 73 (as so amended), is liable to a penalty not exceeding £50, and also to forfeit all explosives and ingredients which are at the time of the offence in his possession or under his control at that place: s 73 (as so amended). The foregoing powers of search are also exercisable in respect of suspected crimes under the Explosive Substances Act 1883: see s 8(1). As to such crimes see PARAS 1022-1025 ante.

6 As to the Secretary of State see PARA 913 ante.

7 Explosives Act 1875 s 73 (as amended: see note 1 supra).

8 As to the Health and Safety Executive see HEALTH AND SAFETY AT WORK vol 52 (2009) PARAS 361-371.

9 See the Health and Safety at Work etc Act 1974 s 20. The powers include those of entry at a reasonable time or in a dangerous situation at any time and with a constable if necessary, examination, making records, sampling, detention or destruction of dangerous substances, requiring information and production of documents, and requiring general facilities and assistance: see s 20, and HEALTH AND SAFETY AT WORK vol 52 (2009) PARA 376.

UPDATE

1016-1043 Offences, Powers, Legal Proceedings, Accidents and Loss

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

1027 Powers of search

NOTES--Certain persons or indorsements mentioned in this paragraph are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/EXPLOSIVES (VOLUME 17(2) (REISSUE))/4. OFFENCES, POWERS, LEGAL PROCEEDINGS, ACCIDENTS AND LOSS/(2) POWERS OF ARREST, SEARCH, SAMPLING AND DESTRUCTION/1028. Powers in connection with forfeiture.

1028. Powers in connection with forfeiture.

If an inspector¹, constable or officer of the local authority² has reasonable cause to believe that any explosive³ or ingredient or substance found by him is liable to be forfeited under the Explosives Act 1875, he may seize and detain it until a magistrates' court has determined whether or not it is liable to forfeiture⁴. He may either require the occupier⁵ of the place in which it was seized (whether a building or not, or a carriage, boat or ship⁶) to detain it there or in any place under the control of the occupier, or remove it to a safe place⁷. Any receptacle containing the seized explosive may be taken in the same way⁸, and any vehicle or vessel in which it was seized may be used to remove it, provided that reasonable compensation is paid to the owner for such use which, failing agreement, is to be determined by the court⁹. During this period the explosive must be kept and conveyed in accordance with the Act, but if all due precautions are taken, the officer is not liable to any penalty or punishment for so keeping or conveying it¹⁰, nor is he civilly liable for acting under this provision unless it is proved that he made the seizure without reasonable cause or caused damage to the article seized by wilful neglect or default¹¹. An occupier who fails to obey instructions after the seizure or (except with the authority of the officer making the seizure or of an inspector, or in case of emergency for the purpose of preventing explosion or fire) removes, alters or in any way tampers or deals with the explosive while it is so detained is liable to a fine and to forfeiture¹². Where there is serious public danger, an inspector (or an officer authorised by an order from him or a justice of the peace, or from a superintendent or other police officer of equal or superior rank) may destroy the explosive or otherwise render it harmless, but he must first take and keep a sample, and, if required, give a portion of it to the owner¹³.

1 le an inspector appointed by the Health and Safety Executive: see PARA 914 ante. As to the Health and Safety Executive see HEALTH AND SAFETY AT WORK vol 52 (2009) PARAS 361-371.

2 As to local authorities see PARA 921 ante.

3 For the meaning of 'explosive' see PARA 905 ante.

4 Explosives Act 1875 s 74. The proceedings must be commenced as soon as practicable after the seizure: Explosives Act 1875 s 74(2). These powers are also exercisable in respect of forfeitures under the Explosive Substances Act 1883: s 8(1) See PARAS 1023, 1024 ante.

5 For the meaning of 'occupier' see PARA 926 para 1 ante.

6 For the meaning of 'carriage', 'boat' and 'ship' see PARA 909 notes 8, 9 ante.

7 Explosives Act 1875 s 74(1).

8 Ibid s 74(3).

9 Ibid s 74(4).

10 Ibid s 74(5).

11 Ibid s 74(6).

12 Ibid s 74(1). The maximum fine is now level 3 on the standard scale: Criminal Justice Act 1982 ss 38, 46. As to the standard scale see PARA 951 note 9 ante.

13 Explosives Act 1875 s 74(1).

UPDATE

1016-1043 Offences, Powers, Legal Proceedings, Accidents and Loss

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

Halsbury's Laws of England/EXPLOSIVES (VOLUME 17(2) (REISSUE))/4. OFFENCES, POWERS, LEGAL PROCEEDINGS, ACCIDENTS AND LOSS/(2) POWERS OF ARREST, SEARCH, SAMPLING AND DESTRUCTION/1029. Explosives in transit.

1029. Explosives in transit.

Any chief officer of police¹ may, for the purpose of ascertaining whether the provisions of the Explosives Act 1875 with respect to the conveyance, loading, unloading and importation of an explosive² are complied with, enter, inspect and examine at any time, including Sundays, the wharf, carriage, ship or boat³ of any carrier or other person who conveys goods for hire, or of the occupier⁴ of any factory, magazine or store⁵, or of the importer of any explosive, where he has reasonable cause to suppose an explosive to be for the purpose of or in course of conveyance, but not so as unnecessarily to obstruct work or business⁶. If an offence is being committed, he may seize and detain or remove the carriage, ship or boat, or the explosive, so as to remove any danger to the public, and may seize and detain the explosive as if it were liable to forfeiture⁷. Any police officer who has reasonable cause to suppose that an offence is being committed in respect of any carriage (not being on a railway⁸), or any boat conveying, loading or unloading an explosive, and that the case is one of emergency, and that delay in obtaining a warrant is likely to endanger life, may stop and enter, inspect and examine such carriage or boat, and take precautions reasonably necessary for removing the danger in the same manner as if the explosive were liable to forfeiture⁹.

1 'Chief officer of police' includes the Director General of the National Criminal Intelligence Service (NCIS) and the Director General of the National Crime Squad (NCS) (see POLICE vol 36(1) (2007 Reissue) PARA 430 et seq): Explosives Act 1875 s 75(2) (added by the Police Act 1997 s 134(1), Sch 9 para 1). 'Officer of police' includes any member of the NCIS appointed under the Police Act 1997 s 9(1)(b) and any member of the NCS appointed under s 55(1)(b): Explosives Act 1875 s 75(2) (added by the Police Act 1997 s 134(1), Sch 9 para 1). See generally POLICE.

2 For the meaning of 'explosive' see PARA 905 ante.

3 For the meaning of 'wharf', 'carriage', 'ship' and 'boat' see PARA 909 notes 3, 8, 9 ante.

4 For the meaning of 'occupier' see PARA 926 note 1 ante.

5 For the meaning of 'magazine' and 'store' see PARA 909 notes 1, 2 ante.

6 Explosives Act 1875 s 75(1) (amended by the Explosives Acts 1875 and 1923 etc (Repeals and Modifications) Regulations 1974, SI 1974/1885, regs 2(a), 9, Sch 1; and the Police Act 1997 s 134(1), Sch 9 para 1). These provisions are applied by the Explosive Substances Act 1883 s 8(1), in respect of crimes under that Act.

7 Explosives Act 1875 s 75(1) (as amended: see note 6 supra). Every officer acting under the Explosives Act 1875 s 75, has the same powers and is in the same position as if he were authorised by a search warrant granted under the Act, and any person failing to admit or obstructing him is liable to the penalty mentioned in PARA 1027 note 5 ante.

8 For the meaning of 'railway' see PARA 917 note 3 ante.

9 Explosives Act 1875 s 75(1) (as amended: see note 6 supra).

UPDATE

1016-1043 Offences, Powers, Legal Proceedings, Accidents and Loss

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

1029 Explosives in transit

TEXT AND NOTE 1--Now any chief officer of police or the Director General of the Serious Organised Crime Agency: 1875 Act s 75(1) (amended by Serious Organised Crime and Police Act 2005 Sch 4 para 1(2)).

NOTE 1--1875 Act s 75(2) substituted: see TEXT AND NOTES 8, 9.

TEXT AND NOTES 8, 9--Now any police officer or designated person: 1875 Act s 75(1) (see TEXT AND NOTE 1). For these purposes 'designated person' means a member of the staff of the Serious Organised Crime Agency who is for the time being designated under the Serious Organised Crime and Police Act 2005 s 43 as a person having the powers of a constable (but this is subject to any limitation specified in such a person's designation under that provision): 1875 Act s 75(2) (substituted by 2005 Act Sch 4 para 1(3)).

Halsbury's Laws of England/EXPLOSIVES (VOLUME 17(2) (REISSUE))/4. OFFENCES, POWERS, LEGAL PROCEEDINGS, ACCIDENTS AND LOSS/(2) POWERS OF ARREST, SEARCH, SAMPLING AND DESTRUCTION/1030. Dangerous fireworks.

1030. Dangerous fireworks.

There are special powers to destroy fireworks (including those partly finished¹) which would be dangerous when in possession of the public notwithstanding that they were handled and used with reasonable care². An inspector³ who finds fireworks in a factory, magazine or store which he has reason for thinking may be dangerous in this sense may take a number of them as a sample and require the occupier to keep the remainder on the premises unmoved and untampered with for a period not exceeding three weeks⁴. Upon being satisfied by examination and testing that the fireworks would be dangerous when in the possession of the public and that the sample is a fair one, the Secretary of State⁵ may require the occupier to deliver up the remainder to a person authorised by him to receive them, and must cause them to be destroyed or otherwise rendered harmless and disposed of as he directs⁶. If he does not so act, the sample must be returned to the occupier unless its value is so small as to make it unreasonable to do so⁷. Breach of any of these requirements renders the occupier liable on summary conviction to a fine⁸.

¹ For the purpose of considering whether fireworks are dangerous, it must be assumed that partly finished fireworks are finished before they come into the possession of the public: Fireworks Act 1951 s 1(5).

² Ibid s 1(1). See also ss 1(5), 3.

³ I.e. an inspector appointed by the Health and Safety Executive: see PARA 914 ante. As to the Health and Safety Executive see HEALTH AND SAFETY AT WORK vol 52 (2009) PARAS 361-371.

⁴ Fireworks Act 1951 s 1(1) (amended by the Explosives Acts 1875 and 1923 etc (Repeals and Modifications) Regulations 1974, SI 1974/1885, reg 6(a)).

⁵ As to the Secretary of State see PARA 913 ante.

⁶ Fireworks Act 1951 s 1(2).

⁷ Ibid s 1(3).

⁸ Ibid s 1(4). The fine may not exceed level 3 on the standard scale: s 1(4) (amended by virtue of the Criminal Justice Act 1982 ss 38, 46). As to the standard scale see PARA 951 note 9 ante.

UPDATE

1016-1043 Offences, Powers, Legal Proceedings, Accidents and Loss

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

1030 Dangerous fireworks

TEXT AND NOTE 4--Reference to magazine omitted: 1951 Act s 1(1) (amended by SI 2005/1082).

Halsbury's Laws of England/EXPLOSIVES (VOLUME 17(2) (REISSUE))/4. OFFENCES, POWERS, LEGAL PROCEEDINGS, ACCIDENTS AND LOSS/(3) LEGAL PROCEEDINGS/1031. Trial of offences under the Explosives Act 1875.

(3) LEGAL PROCEEDINGS

1031. Trial of offences under the Explosives Act 1875.

For the purposes of the provisions of the Explosives Act 1875 which restrict the sale of explosives¹, or conferring a power of search², offences may be prosecuted, penalties recovered, and forfeitures imposed either on indictment or before a magistrates' court³. A magistrates' court may by order prohibit a person from doing any act for which he has been twice convicted under those provisions, and impose a term of imprisonment not exceeding six months for disobedience of such an order⁴.

Other offences under the Act are dealt with summarily or on indictment under the Health and Safety at Work etc Act 1974⁵. Proceedings in England and Wales for such an offence are not to be instituted except by an inspector⁶ or by or with the consent of the Director of Public Prosecutions⁷.

1 le for the purposes of the Explosives Act 1875 ss 30, 32 (as amended): see PARAS 973, 975, 976 ante. For the meaning of 'explosive' see PARA 905 ante.

2 le for the purposes of *ibid* s 73 (as amended): see PARA 112 ante.

3 *Ibid* s 91 (amended by the Explosives Acts 1875 and 1923 etc (Repeals and Modifications) Regulations 1974, SI 1974/1885, regs 2(a), 9, Sch 1). Where proceedings are taken by an officer of a local authority it is unnecessary for him formally to prove his appointment: see *Ross v Helm* [1913] 3 KB 462, DC. All costs and money directed to be recovered as penalties may be recovered before a magistrates' court: Explosives Act 1875 s 91 (as so amended). See also MAGISTRATES.

A harbour, tidal water or inland water which runs between, or abuts on or forms the boundary of the jurisdiction of two or more courts is deemed to be within the jurisdiction of each court: s 90. Any tidal water not included in the foregoing descriptions and within the territorial jurisdiction of Her Majesty, and adjacent to or surrounding any part of the shore of the United Kingdom, and any pier, jetty, mole or work extending into the same, is deemed to form part of the shore to which such water or part of the sea is adjacent or which it surrounds: s 90. For the meaning of 'harbour' and 'tidal water' see PARA 921 note 5 ante; and for the meaning of 'inland water' see PARA 917 note 4 ante. For the meaning of 'United Kingdom' see PARA 909 note 5 ante.

Offences in respect of local authority magazines may be tried in the county or place where the magazine is or in an adjoining county or place: s 72. As to such magazines see PARAS 948-950 ante.

4 Explosives Act 1875 s 91 (amended by the Explosives Acts 1875 and 1923 etc (Repeals and Modifications) Regulations 1974, SI 1974/1885, regs 2(a), 9, Sch 1).

5 See PARA 1017 ante. As to extending the time for bringing summary proceedings see the Health and Safety at Work etc Act 1974 s 34(2)-(4). As to provisions regarding venue, the onus of proving what is 'practicable' and evidence generally see ss 35, 40, 41. See also HEALTH AND SAFETY AT WORK.

6 le an inspector appointed by the Health and Safety Executive: see PARA 914 ante. As to the Health and Safety Executive see HEALTH AND SAFETY AT WORK vol 52 (2009) PARAS 361-371. Although not of counsel or a solicitor, an inspector may be authorised to prosecute proceedings for an offence before a magistrates' court: Health and Safety at Work etc Act 1974 s 39.

7 *Ibid* s 38 (as amended). See also HEALTH AND SAFETY AT WORK vol 53 (2009) PARA 856. As to proceedings by or with the consent of the Director of Public Prosecutions see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(3) (2006 Reissue) PARA 1071.

UPDATE

1016-1043 Offences, Powers, Legal Proceedings, Accidents and Loss

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

1031 Trial of offences under the Explosives Act 1875

TEXT AND NOTES--Repealed: SI 2005/1082.

Halsbury's Laws of England/EXPLOSIVES (VOLUME 17(2) (REISSUE))/4. OFFENCES, POWERS, LEGAL PROCEEDINGS, ACCIDENTS AND LOSS/(3) LEGAL PROCEEDINGS/1032. Proceedings under the Explosive Substances Act 1883.

1032. Proceedings under the Explosive Substances Act 1883.

If a person is charged before a justice with any crime under the Explosive Substances Act 1883¹, no further proceedings may be taken against him without the consent of the Attorney General².

¹ See PARAS 1022-1025 ante.

² Explosive Substances Act 1883 s 7(1) (substituted by the Administration of Justice Act 1982 s 63). Proceedings are not instituted for these purposes until the defendant goes to court to answer the charge and, accordingly, the prior consent of the Attorney General is not required for charging a person with an offence under the Explosive Substances Act 1883 s 7(1): *R v Elliott* (1984) 81 Cr App Rep 115, CA. The absence of that consent invalidates any proceedings: *R v Bates* [1911] 1 KB 964, CCA. The consent given must be related to the offence as charged: see *R v Downey* [1971] NI 224, CCA. Where it is not clear that the jury's attention has properly been directed to the specific events in respect of which consent was given, any subsequent conviction may be quashed: see *R v Taylor* [1960] NI 136, CCA. It is not necessary that the Attorney General should have considered and approved every detail of a charge under the Explosive Substances Act 1883 as it appeared in the indictment, and where his consent is given in wide terms it is to be presumed that he has made the necessary and proper inquiries before giving the consent: *R v Cain* [1976] QB 496, [1975] 2 All ER 900, CA, distinguishing *R v Breckenridge* (1905) 6 OWR 501, and *R v Downey* [1971] NI 224, CCA. As to the Attorney General see the Explosive Substances Act 1883 s 9(1) (amended by the Law Officers Act 1997 s 3(2), Schedule); and CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 529. Any function of the Attorney General may now be exercised by the Solicitor General: Law Officers Act 1997 s 1(1). See also CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(3) (2006 Reissue) PARA 1065.

UPDATE

1016-1043 Offences, Powers, Legal Proceedings, Accidents and Loss

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

Halsbury's Laws of England/EXPLOSIVES (VOLUME 17(2) (REISSUE))/4. OFFENCES, POWERS, LEGAL PROCEEDINGS, ACCIDENTS AND LOSS/(3) LEGAL PROCEEDINGS/1033. Appeals.

1033. Appeals.

In a magistrates' court, a right of appeal against sentence is conferred on every defendant, and against conviction or sentence on a defendant who has pleaded not guilty¹.

¹ See the Magistrates' Courts Act 1980 ss 108-114 (as amended); and MAGISTRATES.

UPDATE

1016-1043 Offences, Powers, Legal Proceedings, Accidents and Loss

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

Halsbury's Laws of England/EXPLOSIVES (VOLUME 17(2) (REISSUE))/4. OFFENCES, POWERS, LEGAL PROCEEDINGS, ACCIDENTS AND LOSS/(3) LEGAL PROCEEDINGS/1034. Evidence.

1034. Evidence.

A copy of a licence confirmed by the Secretary of State¹ or the Health and Safety Executive², and of any special rules under the Explosives Act 1875³, certified by an inspector⁴, is evidence of the licence and special rules respectively, and of the fact of the licence having been duly granted and confirmed and the special rules duly established under the Act⁵.

1 As to the Secretary of State see PARA 913 ante.

2 As to the Health and Safety Executive see HEALTH AND SAFETY AT WORK vol 52 (2009) PARAS 361-371.

3 As to such special rules see PARAS 942, 960 ante.

4 Ie an inspector appointed by the Health and Safety Executive: see PARA 914 ante.

5 Explosives Act 1875 s 60 (amended by the Explosives Acts 1875 and 1923 etc (Repeals and Modifications) Regulations 1974, SI 1974/1885, regs 2(b), 9, Sch 2 paras 5, 17).

UPDATE

1016-1043 Offences, Powers, Legal Proceedings, Accidents and Loss

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

1034 Evidence

TEXT AND NOTES--Repealed: SI 2005/1082.

Halsbury's Laws of England/EXPLOSIVES (VOLUME 17(2) (REISSUE))/4. OFFENCES, POWERS, LEGAL PROCEEDINGS, ACCIDENTS AND LOSS/(3) LEGAL PROCEEDINGS/1035. Offences due to fault of another person: explosives.

1035. Offences due to fault of another person: explosives.

Where the commission by any person of an offence under the Explosive Act 1875¹ is due to the act or default of some other person, that other person is guilty of the offence, and a person may be charged with and convicted of the offence whether or not proceedings are taken against the first-mentioned person².

1 This does not include offences under the Explosives Act 1875 ss 30-32 (ss 31, 32 as amended) (see PARAS 973-976 ante), 80 (as amended) (see PARA 1020 ante): see the Health and Safety at Work etc Act 1974 ss 1(1), 36(1), 53(1), Sch 1.

2 Ibid s 36(1). These provisions are subject to any health and safety regulations made under s 15(6)(a), which may specify the persons or classes of persons who, in the event of a contravention of a requirement or prohibition imposed by or under the regulations, are to be guilty of an offence, whether in addition to or to the exclusion of other persons or classes of persons: see s 36(3); and HEALTH AND SAFETY AT WORK vol 53 (2009) PARA 859.

UPDATE

1016-1043 Offences, Powers, Legal Proceedings, Accidents and Loss

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

Halsbury's Laws of England/EXPLOSIVES (VOLUME 17(2) (REISSUE))/4. OFFENCES, POWERS, LEGAL PROCEEDINGS, ACCIDENTS AND LOSS/(3) LEGAL PROCEEDINGS/1036. Offences due to fault of another person: fireworks.

1036. Offences due to fault of another person: fireworks.

Where proceedings are brought against the occupier of a fireworks factory (the first defendant) for an offence in relation to the marking of fireworks¹, he is entitled, by laying information and giving the prosecution at least three clear days' notice of his intention, to have brought before the court in the proceedings any other person (the second defendant), to whose act or default he alleges the contravention to be due². If, after the contravention is proved, the first defendant proves that it was due to the act or default of the second defendant, the second defendant may be convicted, and, if the first defendant further proves that he used all due diligence to secure that the requirements were complied with, he is entitled to be acquitted³. In such proceedings, the prosecution and the second defendant have the right to cross-examine the first defendant (if he gives evidence) and his witnesses and to call rebutting evidence⁴, and the court may make such order as it thinks fit for the payment of costs by any one party to any other party⁵. Where such an offence has been committed and an inspector is reasonably satisfied that the occupier of the fireworks factory would be able to secure an acquittal under the foregoing provision, he may, without first causing proceedings to be taken against the occupier, proceed in the first instance against the person actually responsible for the breach, with which the latter may be charged and for which, if it was due to his act or default, he may be convicted as if he were the occupier⁶.

1 le an offence against the Fireworks Act 1951 s 5 (as amended): see PARA 1015 ante.

2 Ibid s 5(6).

3 Ibid s 5(6).

4 Ibid s 5(7)(a).

5 Ibid s 5(7)(b).

6 Ibid s 5(8). As to inspectors see PARA 914 ante.

UPDATE

1016-1043 Offences, Powers, Legal Proceedings, Accidents and Loss

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

1036 Offences due to fault of another person: fireworks

TEXT AND NOTE 6--1951 Act s 5(8) amended: SI 2005/1082.

Halsbury's Laws of England/EXPLOSIVES (VOLUME 17(2) (REISSUE))/4. OFFENCES, POWERS, LEGAL PROCEEDINGS, ACCIDENTS AND LOSS/(3) LEGAL PROCEEDINGS/1037. Distress of ship.

1037. Distress of ship.

Where the owner or master¹ of a ship or boat² is adjudged to pay a penalty for an offence committed in relation to the ship or boat, the court may, in addition to any other power it may have for the purpose of compelling payment of the penalty, direct it to be levied by distress and the sale of the vessel and her tackle³.

1 For the meaning of 'master' see PARA 909 note 17 ante.

2 'Ship' and 'boat' include hovercraft: see PARA 8 note 8 ante.

3 Explosives Act 1875 s 95. As to distress under the Magistrates' Court Act 1980 see MAGISTRATES.

UPDATE

1016-1043 Offences, Powers, Legal Proceedings, Accidents and Loss

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

Halsbury's Laws of England/EXPLOSIVES (VOLUME 17(2) (REISSUE))/4. OFFENCES, POWERS, LEGAL PROCEEDINGS, ACCIDENTS AND LOSS/(3) LEGAL PROCEEDINGS/1038. Enforcing forfeiture.

1038. Enforcing forfeiture.

Where any explosive¹ or ingredient is alleged to be liable to be forfeited under certain provisions of the Explosives Act 1875², or under the Explosive Substances Act 1883³, an indictment, information or complaint may be laid against the owner for the sole purpose of enforcing the forfeiture⁴. Where the owner is unknown or cannot be found, the court may cause the intention to forfeit to be advertised⁵. Then, after hearing the owner or any person present on his behalf, the court may order the whole or part to be forfeited⁶. Any explosive, ingredient or receptacle forfeited may be sold, destroyed or otherwise disposed of as the court or the Secretary of State⁷ may direct⁸.

Any court before whom a person is convicted of an offence against the above mentioned provisions may, in lieu of forfeiting any explosive, impose an additional penalty not exceeding such sum as appears to the court to be the value of the explosive liable to forfeiture⁹.

1 For the meaning of 'explosive' see PARA 905 ante.

2 Under the Explosives Act 1875 s 30 or s 32 (as amended) (see PARAS 973, 975, 976 ante), or under s 73 (see PARA 1027 ante). As to the general power of forfeiture in respect of offences under other provisions of that Act see PARA 1017 ante.

3 See PARAS 1023, 1024 ante.

4 Explosives Act 1875 s 89 (amended by the Explosives Acts 1875 and 1923 etc (Repeals and Modifications) Regulations 1974, SI 1974/1885, regs 2(a), 9, Sch 1). See also the Explosive Substances Act 1883 s 8(1). Receptacles containing the explosive are equally liable to forfeiture: Explosives Act 1875 s 96.

5 Ibid s 89 (as amended: see note 4 supra). See also the Explosives Substances Act 1883 s 8(1).

6 Explosives Act 1875 s 89 (as amended: see note 4 supra). See also the Explosives Substances Act 1883 s 8(1).

7 As to the Secretary of State see PARA 913 ante.

8 Explosives Act 1875 s 96. An officer carrying out such a direction of the court is protected to the same extent as an officer seizing the explosive before the hearing: see PARA 1028 ante. For the purpose of the sale or disposal of forfeited explosives, ingredients or receptacles the court or the Secretary of State may requisition the vessel or vehicle containing them on payment of reasonable compensation, to be determined in case of dispute by a magistrates' court: s 96. Where destruction is ordered, the owner or possessor of the explosive or ingredient and the owner of the vehicle or owner or master of the vessel containing it are under a duty to obey, and the vehicle or vessel may be ordered to be detained until this is done: s 96. If there is default and detention alone will not secure public safety, and other methods of destruction are impracticable, the Secretary of State may direct the destruction of the vehicle or vessel as if it were a receptacle: s 96. As to the disposal of non-pecuniary forfeitures see generally the Magistrates' Courts Act 1980 s 140; and SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 149.

9 Explosives Act 1875 s 89 (amended by the Explosives Acts 1875 and 1923 etc (Repeals and Modifications) Regulations 1974, SI 1974/1885, regs 2(a), 9, Sch 1).

UPDATE

1016-1043 Offences, Powers, Legal Proceedings, Accidents and Loss

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

1038 Enforcing forfeiture

NOTES--Certain persons or indorsements mentioned in this paragraph are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/EXPLOSIVES (VOLUME 17(2) (REISSUE))/4. OFFENCES, POWERS, LEGAL PROCEEDINGS, ACCIDENTS AND LOSS/(3) LEGAL PROCEEDINGS/1039. Saving of other liability.

1039. Saving of other liability.

The Explosives Act 1875 does not exempt a person from any indictment or other proceeding for a nuisance, or for an offence indictable at common law or by any other Act, but no person is to be punished twice for the same offence¹. Any court has power to direct the discontinuance of a prosecution under the Act and the substitution of an indictment at common law or under any other Act².

¹ Explosives Act 1875 s 102. For a similar provision in respect of the Explosive Substances Act 1883 see PARA 1032 ante.

² Explosives Act 1875 s 102. See also PARA 901 note 1 ante.

UPDATE

1016-1043 Offences, Powers, Legal Proceedings, Accidents and Loss

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

Halsbury's Laws of England/EXPLOSIVES (VOLUME 17(2) (REISSUE))/4. OFFENCES, POWERS, LEGAL PROCEEDINGS, ACCIDENTS AND LOSS/(3) LEGAL PROCEEDINGS/1040. Civil liability.

1040. Civil liability.

In an action for damages for negligence resulting in personal injuries, the fact that a statutory duty was imposed on the defendant to take certain precautions or to do certain acts, and that he has not complied with the duty, will, if the omission is a cause of the injuries, be relevant to the issue whether he has taken reasonable care or has been negligent¹. The Explosives Act 1875 does not exempt any person from any action or suit in respect of any nuisance or other tort which might, but for the provisions of the Act, have been brought against him, unless the Act expressly provides otherwise².

¹ *Blamires v Lancashire and Yorkshire Rly Co* (1873) LR 8 Exch 283 at 289; cf *Lochgelly Iron and Coal Co Ltd v M'Mullan* [1934] AC 1 at 9, HL. However, the statutory requirements must fit the particular circumstances, otherwise the question of negligence should be approached independently of them: *Chipchase v British Titan Products Co Ltd* [1956] 1 QB 545, [1956] 1 All ER 613, CA. See also HEALTH AND SAFETY AT WORK; and generally NEGLIGENCE.

It is thought, however, that an action for damages for breach of statutory duty imposed by the Explosives Act 1875 will not lie, because the Act was not intended to be a ground of civil liability as distinct from penal liability. As to actions for breach of statutory duty generally see DAMAGES vol 12(1) (Reissue) PARA 876; and STATUTES vol 44(1) (Reissue) PARA 1353 et seq.

² Explosives Act 1875 s 102.

UPDATE

1016-1043 Offences, Powers, Legal Proceedings, Accidents and Loss

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

Halsbury's Laws of England/EXPLOSIVES (VOLUME 17(2) (REISSUE))/4. OFFENCES, POWERS, LEGAL PROCEEDINGS, ACCIDENTS AND LOSS/(4) ACCIDENTS AND LOSS/(i) Notification of Accidents/1041. Accident in factory, magazine or store.

(4) ACCIDENTS AND LOSS

(i) Notification of Accidents

1041. Accident in factory, magazine or store.

The occupier¹ of an explosives factory, magazine or store² must forthwith notify the Health and Safety Executive³ of any accident by explosion or fire which occurs in or about or in connection with such premises, whether personal injury or loss of life is caused or not, giving details of any injuries or loss of life occasioned by the incident⁴. In the case of registered premises notice must be sent only where loss of life or personal injury is involved⁵. Any occupier who fails to comply with these provisions is guilty of an offence⁶.

1 For the meaning of 'occupier' see PARA 926 note 1 ante.

2 For the meaning of 'magazine' and 'store' see PARA 909 notes 1, 2 ante.

3 As to the Health and Safety Executive see HEALTH AND SAFETY AT WORK vol 52 (2009) PARAS 361-371.

4 Explosives Act 1875 s 63 (amended by the Explosives Acts 1875 and 1923 etc (Repeals and Modifications) Regulations 1974, SI 1974/1885, reg 2, Sch 1, Sch 2 para 3). As to notification of accidents in factories and mines generally see HEALTH AND SAFETY AT WORK vol 52 (2009) PARA 399 et seq.

5 Explosives Act 1875 s 63 (as amended: see note 4 supra).

6 Ibid s 63 (as amended: see note 4 supra). As to the penalties for such an offence see PARA 1017 ante.

UPDATE

1016-1043 Offences, Powers, Legal Proceedings, Accidents and Loss

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

1041-1042 Notification of Accidents

Repealed: SI 2005/1082.

Halsbury's Laws of England/EXPLOSIVES (VOLUME 17(2) (REISSUE))/4. OFFENCES, POWERS, LEGAL PROCEEDINGS, ACCIDENTS AND LOSS/(4) ACCIDENTS AND LOSS/(i) Notification of Accidents/1042. Accident on vehicle or vessel.

1042. Accident on vehicle or vessel.

If an accident by explosion or fire occurs in or about or in connection with any carriage, ship or boat¹ conveying an explosive², or on or from which an explosive is being loaded or unloaded, causing loss of life or personal injury, or, where no such loss or injury is caused, if the amount of the explosive conveyed or being so loaded or unloaded exceeds in the case of gunpowder 500 kg, and in the case of any other explosive the prescribed amount (except explosive of Division 1 of the ammunition class³), the owner or master⁴ of the vessel or vehicle, and the owner of the explosive concerned, or one of them, must notify the Health and Safety Executive of the accident and of the loss of life or personal injury, if any, occasioned by it⁵. Any owner or master who fails to comply with these provisions is guilty of an offence⁶.

1 For the meaning of 'carriage', 'ship' and 'boat' see PARA 909 notes 8, 9 ante.

2 For the meaning of 'explosive' see PARA 905 ante.

3 See PARA 908 note 11 ante.

4 For the meaning of 'master' see PARA 909 note 17 ante.

5 Explosives Act 1875 s 63 (amended by the Explosives Acts 1875 and 1923 etc (Repeals and Modifications) Regulations 1974, SI 1974/1885, reg 2(b), Sch 2 para 3; and the Explosives Act 1875 etc (Metrication and Miscellaneous Amendment) Regulations 1984, SI 1984/510, reg 2, Sch 1). The prescribed amount is specified by Order in Council (No 11) dated 27 November 1875, as 200 lb. As to the Health and Safety Executive see HEALTH AND SAFETY AT WORK vol 52 (2009) PARAS 361-371.

6 Explosives Act 1875 s 63 (as amended: see note 5 supra). As to the penalties for the offence see PARA 1017 ante.

UPDATE

1016-1043 Offences, Powers, Legal Proceedings, Accidents and Loss

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

1041-1042 Notification of Accidents

Repealed: SI 2005/1082.

Halsbury's Laws of England/EXPLOSIVES (VOLUME 17(2) (REISSUE))/4. OFFENCES, POWERS, LEGAL PROCEEDINGS, ACCIDENTS AND LOSS/(4) ACCIDENTS AND LOSS/(ii) Inquiries, Investigations, Inquests/1043. Investigations and inquiries in general.

(ii) Inquiries, Investigations, Inquests

1043. Investigations and inquiries in general.

The Health and Safety Commission may at any time (1) direct the Health and Safety Executive¹ or authorise any other person to investigate and make a special report on any accident, occurrence, situation or other matter which the Commission thinks it necessary or expedient to investigate for any of the general purposes of the statutory provisions² as to health and safety at work and control of dangerous substances³, or (2), with the consent of the Secretary of State, direct an inquiry to be held into any such matter⁴. Any such inquiry must be held in accordance with regulations⁵ made for the purpose by the Secretary of State, and must be held in public except where or to the extent that the regulations provide otherwise⁶.

1 As to the establishment of the Executive see the Health and Safety at Work etc Act 1974 s 10 (as amended); and HEALTH AND SAFETY AT WORK vol 52 (2009) PARA 361 et seq.

2 *Ibid* Pt I (ss 1-54) (as amended); and HEALTH AND SAFETY AT WORK vol 52 (2009) PARA 303.

3 See *ibid* s 14(1), (2)(a); and HEALTH AND SAFETY AT WORK vol 52 (2009) PARA 397.

4 *Ibid* s 14(2)(b) (as amended); and HEALTH AND SAFETY AT WORK vol 52 (2009) PARA 397. As to the Secretary of State see PARA 913 ante.

5 *Ibid* the Health and Safety Inquiries (Procedure) Regulations 1975, SI 1975/335 (as amended). See also HEALTH AND SAFETY AT WORK vol 52 (2009) PARA 398.

6 Health and Safety at Work etc Act 1974 s 14(3). As to the publication of reports made on investigation or inquiry see s 14(5); and as to procedure generally see the Health and Safety Inquiries (Procedure) Regulations 1975, SI 1975/335 (as amended); and HEALTH AND SAFETY AT WORK vol 52 (2009) PARA 398.

UPDATE

1016-1043 Offences, Powers, Legal Proceedings, Accidents and Loss

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

1043 Investigations and inquiries in general

TEXT AND NOTES--Health and Safety Commission replaced by the Health and Safety Executive: see Legislative Reform (Health and Safety Executive) Order 2008, SI 2008/960; and HEALTH AND SAFETY AT WORK vol 52 (2009) PARA 361 et seq. Health and Safety at Work etc Act 1974 s 14 amended: SI 2008/9620.

Halsbury's Laws of England/EXPLOSIVES (VOLUME 17(2) (REISSUE))/4. OFFENCES, POWERS, LEGAL PROCEEDINGS, ACCIDENTS AND LOSS/(4) ACCIDENTS AND LOSS/(ii) Inquiries, Investigations, Inquests/1044. Inquiries under the Explosive Substances Act 1883.

1044. Inquiries under the Explosive Substances Act 1883.

Where the Attorney General has reasonable ground to believe that a crime under the Explosive Substances Act 1883¹ has been committed, he may order an inquiry to be held, and with that object may authorise any justice for the place in which the crime is suspected to have been committed to hold the inquiry². With such authority a justice may, although no person is charged before him, sit at a magistrates' court or police station and examine witnesses on oath concerning such crime, take depositions, and bind over witnesses³.

A witness on such examination is not excused from answering any question on the ground that the answer may incriminate or tend to incriminate that witness or the husband or wife of that witness, but any answer a person may give on examination is not admissible against that person or the husband or wife of that person in any proceeding, civil or criminal, except on indictment or other criminal proceeding for perjury⁴. The justice who so examines a person concerning the crime must not take part in committing that person for trial for that crime⁵.

Where a witness is bound over to appear and information is laid in writing and on oath that he is about to abscond or has absconded, a justice may issue a warrant for his arrest, and, if he is arrested, any justice, upon being satisfied that the ends of justice would otherwise be defeated, may commit him to prison until the time at which he is bound to give evidence, unless he in the meantime produces sufficient sureties⁶.

1 See PARAS 1022-1025 ante.

2 Explosive Substances Act 1883 s 6(1).

3 See *ibid* s 6(1). The justice has the same powers as to the compelling of attendance of witnesses as he has concerning the matter of an information or complaint: s 6(1).

4 *Ibid* s 6(2) (amended by the Civil Evidence Act 1968 s 17(3), Schedule).

5 Explosive Substances Act 1883 s 6(3).

6 *Ibid* s 6(4). Any person so arrested is entitled on demand to receive a copy of the information upon which the warrant for his arrest was issued: s 6(4) proviso.

UPDATE

1044 Inquiries under the Explosive Substances Act 1883

TEXT AND NOTE 2--Words 'for the place ... committed' omitted: Explosive Substances Act 1883 s 6(1) (amended by Courts Act 2003 Sch 8 para 56, Sch 10).

TEXT AND NOTE 4--References to husband or wife are now to spouse or civil partner: 1883 Act s 6(2) (amended by Civil Partnership Act 2004 Sch 27 para 1).

Halsbury's Laws of England/EXPLOSIVES (VOLUME 17(2) (REISSUE))/4. OFFENCES, POWERS, LEGAL PROCEEDINGS, ACCIDENTS AND LOSS/(4) ACCIDENTS AND LOSS/(ii) Inquiries, Investigations, Inquests/1045. Inquests.

1045. Inquests.

A coroner must adjourn an inquest into the death of a person which may have been caused by an accident or disease if an inspector appointed by, or a representative of, the enforcing authority is not present to watch the proceedings¹.

¹ See the Coroners Rules 1984, SI 1984/552, r 23; and CORONERS vol 9(2) (2006 Reissue) PARA 1008. As to proceedings at inquests see CORONERS vol 9(2) (2006 Reissue) PARA 978 et seq.

Halsbury's Laws of England/EXPLOSIVES (VOLUME 17(2) (REISSUE))/4. OFFENCES, POWERS, LEGAL PROCEEDINGS, ACCIDENTS AND LOSS/(4) ACCIDENTS AND LOSS/(iii) Reporting of Loss/1046-1100. Reporting loss.

(iii) Reporting of Loss

1046-1100. Reporting loss.

Any person who acquires possession, keeps, loads, unloads or transports explosive¹, or is the occupier² of a place where it is loaded or unloaded while on a journey must ensure that the loss of any explosive is reported immediately to the chief officer of police for the police area in which the loss occurs, or, if he does not know where the loss occurred, to the chief officer of police for the police area where the loss was discovered³. Where the person required to ensure the reporting of a loss is a person who had acquired possession of the explosive or was keeping it, he must confirm the report in writing without delay⁴, giving information specifying:

- 98 (1) the date and time that the loss was first discovered⁵;
- 99 (2) the place at which that discovery was made⁶;
- 100 (3) a description of each type of explosive that has been lost sufficient to distinguish that type from other explosives which are similar but not identical⁷;
- 101 (4) for each type lost (a) the number of articles lost; or (b) the total nominal mass of each type of explosive substance lost, except that in the case of a substance in cartridge form, the number of cartridges lost may be given⁸.

Any person who transports, loads or unloads explosive, or is the occupier of a place where it is loaded, must also report the loss of any explosive without delay to the consignor, or, if the consignor is outside the United Kingdom, the consignee⁹. An employee must inform his employer without delay if he becomes aware of any loss of explosive which his employer must report¹⁰.

Where any loss of explosive occurs at a licensed factory or licensed magazine, then any requirement to report or supply information to a chief officer of police will include a like requirement to report or supply the same information to the Health and Safety Executive¹¹.

1 For the meaning of 'explosive' see PARA 931 note 1 ante.

2 For the meaning of 'occupier' see PARA 926 note 1 ante.

3 Control of Explosives Regulations 1991, SI 1991/1531, reg 13(1). Where any loss of explosive occurs outside Great Britain, any report must be made to any chief officer of police: reg 14(2). For exceptions to applicable explosives see reg 3(1).

4 Ibid reg 13(2).

5 Ibid reg 13(2)(a).

6 Ibid reg 13(2)(b).

7 Ibid reg 13(2)(c).

8 Ibid reg 13(2)(d). In the case of a person mentioned in reg 12(4)(a) (see PARA 979 ante), reg 13(2)(d) is complied with sufficiently if a reasonable estimate of the total quantity of explosive lost is included: reg 13(3).

9 Ibid reg 13(4). Any consignor or consignee to whom a loss is reported under reg 13(4) must, without delay, notify the loss in writing to the chief officer of police for the police area in which the loss was discovered, and

also, if different, the chief officer of police who issued any explosives certificate held by the consignor or consignee which relates to the explosive the loss of which has been reported, giving the information listed in reg 13(2) (see notes 4-8 supra): reg 13(6). Any person making a report under reg 13(4) must provide the consignor or consignee with any information in the possession of the person making the report which the consignor or consignee needs to comply with reg 4(6): reg 13(5). For the meaning of 'United Kingdom' see PARA 909 note 5 ante.

10 Ibid reg 13(7).

11 Ibid reg 13(8). As to the Health and Safety Executive see HEALTH AND SAFETY AT WORK vol 52 (2009) PARAS 361-371.

UPDATE

1045-1100 Reporting loss

TEXT AND NOTE 11--For 'licensed factory or licensed magazine' read 'site in relation to which the Health and Safety Executive is the licensing authority by virtue of Manufacture and Storage of Explosives Regulations 2005, SI 2005/1082, Sch 1 para 1(c)': SI 1991/1531 reg 13(8) (amended by SI 2005/1082).